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April 12, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2014-2015

I. SUMMARY

The Department of Commerce ("Department") analyzed the case and rebuttal briefs of interested parties in the seventh administrative review of the antidumping duty ("AD") order on certain new pneumatic off-the-road tires ("OTR Tires") from the People's Republic of China ("PRC") for the period of review ("POR") September 1, 2014, through August 30, 2015. The review covers the following exporters of subject merchandise:

1. Aeolus Tyre Co., Ltd. ("Aeolus")
2. Shiyan Desizheng Industry & Trade Co., Ltd. ("Desizheng")
3. Qingdao Jinhaoyang International Co., Ltd. ("Jinhaoyang")
4. Weifang Jintongda Tyre Co., Ltd. ("Jintongda")
5. Sailun Jinyu Group Co., Ltd. ("Sailun")
6. Guizhou Tyre Co., Ltd. ("GTC")[1]
7. Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Qingdao FTZ")

[1] In the initial investigation, the Department found GTC and Guizhou Tyre Import and Export Corporation ("GTCIE") to be affiliated pursuant to section 771(33)(B), (E), (F) and (G) of the Tariff Act of 1930, as amended, and found that it was appropriate to treat these companies as a single entity pursuant to 19 CFR 351.401(f). *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) ("*OTR Tires LTFV Determination*"). This decision is unchallenged in the instant review, and there is no evidence on the record of this review that calls this determination into question. Thus, the Department continues to treat GTC and GTCIE as a single entity (collectively, "GTC") pursuant to 19 CFR 351.401(f).

8. Qingdao Qihang Tyre Co. ("Qihang")
9. Tianjin Leviathan International Trade Co., Ltd. ("Leviathan")
10. Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai")
11. Trelleborg Wheel Systems Hebei Co. ("TWS Hebei")
12. Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei")
13. Xuzhou Xugong Tyres Co. Ltd. ("Xugong")[2]
14. Zhongce Rubber Group Company Limited ("Zhongce").

II. BACKGROUND

On October 14, 2016, the Department published the *Preliminary Results* of this administrative review.[3] The Department invited interested parties to comment on the *Preliminary Results*.[4]

On December 14, 2016, the Department received timely filed case briefs from GTC,[5] Xugong,[6] Qingdao FTZ,[7] and Aeolus,[8] as well as Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (collectively, "Petitioners").[9] On December 21, 2016, the Department

[2] The Department previously found Xugong to be affiliated with Xuzhou Armour Rubber Company Ltd. ("Armour") and Xuzhou Hanbang Tyre Co., Ltd. ("Hanbang") pursuant to section 771(33)(E) of the Tariff Act of 1930, as amended, and found that it was appropriate to treat these companies as a single entity pursuant to 19 CFR 351.401(f). *See Certain New Pneumatic Off-The-Road Tires From The People's Republic Of China: Preliminary Results Of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61166, 61167 (October 9, 2015), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016) ("*OTR Tires 13-14*"). This decision is unchallenged in the instant review and there is no evidence on the record of this review that calls this determination into question. Thus, the Department continues to treat Xugong, Armour, and Hanbang as a single entity (collectively, "Xugong") pursuant to 19 CFR 351.401(f).

[3] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 71068 (October 14, 2016) ("*Preliminary Results*") and accompanying "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2014-2015," dated October 5, 2016 ("PDM").

[4] *See Preliminary Results*, 81 FR at 71068.

[5] *See* letter from GTC, "GTC and GTCIE Direct Case Brief in the Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 14, 2016 ("GTC's Case Brief").

[6] *See* letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Case Brief: Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 14, 2016 ("Xugong's Case Brief").

[7] *See* letter from Qingdao FTZ, "Qingdao FTZ Direct Case Brief in the Seventh Administrative Review of the Antidumping Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated December 14, 2016 ("Qingdao FTZ's Case Brief").

[8] *See* letter from Aeolus, "Aeolus Direct Case Brief in the Seventh Administrative Review of the Antidumping Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated December 14, 2016 ("Aeolus' Case Brief").

[9] *See* letter from Petitioners, "Case Brief of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 14, 2016 ("Petitioners' Case Brief").

received timely filed rebuttal briefs from Petitioners,[10] GTC,[11] Zhongce,[12] Jinhaoyang,[13] and Xugong.[14]

On December 22, 2016, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department extended the period for issuing the final results of this review by sixty-days, to April 12, 2017.[15] Additionally, in accordance with timely requests from parties, the Department held a public hearing on February 15, 2017.[16]

III. SCOPE OF THE ORDER

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[17] combine harvesters,[18] agricultural high clearance sprayers,[19] industrial tractors,[20] log-skidders,[21] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[22] (2) construction vehicles and equipment, including

[10] *See* letter from Petitioners, "Rebuttal Brief of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 21, 2016 ("Petitioners' Rebuttal Brief").

[11] *See* letter from GTC, "GTC and GTCIE Rebuttal Brief in the Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 21, 2016 ("GTC's Rebuttal Brief").

[12] *See* letter from Zhongce, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Zhongce's Rebuttal Brief," dated December 21, 2016 ("Zhongce's Rebuttal Brief").

[13] *See* letter from Jinhaoyang, "Jinhaoyang's Reply Brief Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 21, 2016 ("Jinhaoyang's Rebuttal Brief").

[14] *See* letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Rebuttal Brief: Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 21, 2016 ("Xugong's Rebuttal Brief").

[15] *See* memorandum to Christian Marsh, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2014-2015," dated December 22, 2016.

[16] *See* the Hearing Transcript, filed onto the record by Kevin Connolly Court Reporting.

[17] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[18] Combine harvesters are used to harvest crops such as corn or wheat.

[19] Agricultural sprayers are used to irrigate agricultural fields

[20] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[21] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[22] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

earthmover articulated dump products, rigid frame haul trucks,[23] front end loaders,[24] dozers,[25] lift trucks, straddle carriers,[26] graders,[27] mobile cranes,[28] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[29] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;

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[23] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[24] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[25] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.

[26] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[27] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

[28] *I.e.*, "on-site" mobile cranes designed for off-highway use.

[29] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

IV. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review and analysis of the comments received from parties, we made certain changes to our margin calculations for Xugong.[30] Specifically, we:

1. revised the surrogate value for tire valves,[31]
2. corrected a ministerial error regarding the valuation of Smoked Sheet Natural Rubber,[32]
3. calculated a U.S. sales adjustment for Xugong’s warehousing expense,[33]
4. revised Xugong’s indirect selling expense ratio and application thereof,[34]

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[30] *See* memorandum to the File, “2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Analysis of the Final Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.,” dated concurrently with this memorandum (“Xugong’s Final Analysis Memo”).

[31] *See below* at Comment 6; *see also* Memorandum to the File, “Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People’s Republic of China: Surrogate Value Memorandum,” dated concurrently with this memorandum (“Final SV Memo”).

[32] *See below* at Comment 3; *see also* Xugong’s Final Analysis Memo.

[33] *See below* at Comment 7; *see also* Xugong’s Final Analysis Memo.

[34] *Id*.

5. recalculated Xugong's sales adjustment for value added tax ("VAT") for its constructed export price ("CEP") sales,[35] and
6. corrected a ministerial error regarding the deduction of tubes and flaps from applicable sales.[36]

V. LIST OF COMMENTS

Comment 1: Separate Rates
- A. Whether to Grant Aeolus a Separate Rate
- B. Whether to Grant GTC a Separate Rate
- C. Whether to Grant Jinhaoyang a Separate
- D. Whether to Grant Zhongce a Separate Rate

Comment 2: Calculation of the Cost of Tube and Flap Inputs for Xugong
Comment 3: Surrogate Value for Smoked Sheet Natural Rubber
Comment 4: Surrogate Value for Inland Truck Freight
Comment 5: Surrogate Value for Carbon Black
Comment 6: Surrogate Value for Tire Valves
Comment 7: Warehousing Expense Calculation for Xugong
Comment 8: Whether to Adjust Xugong's U.S. Prices for Irrecoverable Value Added Tax
Comment 9: Additional Comments Raised by GTC

VI. DISCUSSION OF THE ISSUES

Comment 1: Separate Rates

In the *Preliminary Results*, we determined that Aeolus, and GTC were not eligible for a separate rate because they failed to demonstrate an absence of *de facto* government control over their export activities, and that Tianjin Leviathan International Trade Co., Ltd. ("Leviathan") was not eligible for a separate rate because it did not submit a response or certification in response to the Department's separate rate questionnaire. In addition, we also determined that Shiyan Desizheng Industry & Trade Co., Ltd. ("Desizheng"), Sailun Jinyu Group Co., Ltd. ("Sailun"), Weifang Jintongda Tyre Co., Ltd. ("Jintongda"), Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai"), Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei"), Qingdao Qihang Tyre Co. ("Qihang"), Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Quingdao FTZ"), Jinhaoyang and Zhongce were eligible for a separate rate. Interested parties only commented on the separate rate eligibility of Aeolus, GTC, Jinhaoyang, and Zhongce. Accordingly, for the final results we continue to find that Leviathan is not eligible for a separate rate and that Desizheng, Sailun, Jintongda, TWS Xingtai, Zhongwei, Qihang, and Quingdao FTZ are eligible for a separate rate. Further, as discussed below, for the final results, and based on record evidence, we continue to find that Aeolus and GTC are not eligible for a separate rate, and that Jinhaoyang and Zhongce are eligible for a separate rate.

As we stated in the *Preliminary Results,* in proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies

[35] *See below* at Comment 8; *see also* Xugong's Final Analysis Memo.
[36] *See below* at Comment 2; *see also id.*

within the NME country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, *de jure* and *de facto*, with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[37] as further developed in *Silicon Carbide*.[38] In accordance with this separate rate test, the Department assigns separate rates to respondents in NME proceedings if respondents demonstrate the absence of both *de jure* and *de facto* government control over their export activities.[39]

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[40]

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[41]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades 11-12* AD proceeding, and the Department's determinations therein.[42] In particular, we note that in litigation involving the *Diamond Sawblades 11-12*

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[37] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*").
[38] *See Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").
[39] *See, e.g.*, *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007); *Brake Rotors From the People's Republic of China; Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999) ("*Creatine*").
[40] *See Sparklers*, 56 FR at 20589.
[41] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995) ("*Furfuryl Alcohol*").
[42] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memo at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum ("IDM") at Comment l ("*Diamond Sawblades 11-12*").

proceeding, the CIT found the Department's existing separate rates analysis deficient in the specific circumstances of that case, which involved a government-controlled entity that maintained significant ownership in the respondent exporter.[43] Following the Court's reasoning, as affirmed by the Court of Appeals for the Federal Circuit ("CAFC"), in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly,[44] in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[45] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

We found in the *Preliminary Results* that Aeolus and GTC, established their *de jure* independence from the PRC government. However, in the *Preliminary Results*, Aeolus and GTC failed to demonstrate the absence of *de facto* control by the PRC government. Additionally, in the *Preliminary Results*, the Department determined that Jinhaoyang and Zhongce established their independence from *de jure* and *de facto* government control over their export activities, and thus, are eligible for separate rates.

As noted above, the CAFC has held that the Department has the authority to place the burden on the exporter to establish an absence of government control.[46] For the reasons explained below,

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[43] *See Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) ("*Advanced Tech I*"), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd. v. United States,* Case No. 2014-1154 (CAFC 2014) ("*Advanced Tech II*") (collectively, "*Advanced Tech*") ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it… Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.…The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export…AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted)). *Id.*, at 1351-1357.
[44] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 81 FR 4251 (January 4, 2016) and accompanying IDM at Comment 7 ("in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally." (footnotes omitted)).
[45] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9 ("*Steel Wire Rod Prelim*"), unchanged in *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014) ("*Steel Wire Rod Final*").
[46] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (CAFC 1997) ("*Sigma*").

the Department continues to find, based on the totality of the record evidence, that Aeolus and GTC have not demonstrated an absence of *de facto* government control, and are therefore not entitled to a separate rate. In contrast, the Department continues to find that Jinhaoyang and Zhongce rebutted the presumption of *de jure* and *de facto* government control over their export activities and are eligible for a separate rate.

A. Whether to Grant Aeolus a Separate Rate

Aeolus' Comments

- Aeolus argues that because the Department has made no indication that it has changed its separate rate test from its longstanding practice[47] established in *Sparklers* and *Silicon Carbide*,[48] and because the Department's preliminary decision to deny Aeolus a separate rate is not supported by record evidence, for the final results, the Department should grant Aeolus a separate rate.
- The Department should reconsider the totality of the circumstances with respect to Aeolus in this case because its record evidence is easily distinguishable from those presented in *Advanced Tech I*,[49] as well as other recent decisions in light of this ruling.[50]
- The company website the Department referenced in its preliminary decision is primarily for advertisement purposes;[51] it is not an official business document objectively demonstrating "control" in the manner considered by the Department under its separate rate test.
- Aeolus argues that we did not analyze all four factors of the *de facto* test or consider the totality of the circumstances.
- Furthermore, Aeolus argues that the facts in this review are distinguishable from *Advanced Tech II*[52] as Aeolus' parent company's board is elected by its shareholders.

Petitioners' Rebuttal

- The Department properly determined that Aeolus is ineligible for a separate rate.
- Petitioners argue that there are additional shareholders that are also ultimately state owned, in addition to those recognized by Aeolus.[53] Petitioners argue that Aeolus shareholders that can

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[47] *See* Aeolus' Case Brief, at 2 (citing to *Furfuryl Alcohol*, 60 FR at 22545).
[48] *Id.* (citing to *Sparklers*, 56 FR at 20588 and *Silicon Carbide*, 59 FR at 22585).
[49] *Id.*, at 6 (citing *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013); *Advanced Tech I)*.
[50] *Id.* (citing to *1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at Comment 1, and *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; *2014-2015*, 81 FR 62474 (September 9, 2016)).
[51] *Id.*, at 7 (citing to letter from Petitioners', "Administrative Review of the Antidumping Duty Order on New Pneumatic Off- The-Road Tires from China (A–570–912): Petitioners' Rebuttal Information and Deficiency Comments on Aeolus' Separate Rate Application," dated December 30, 2015, at Attachment 3 ("Petitioners' Aeolus SRA Rebuttal") which stated that stated that China National Tire & Rubber Co., Ltd. ("CNRC"), not China National Chemical Corporation., controls Aeolus).
[52] *Id.*, at 4, 14, 16 (citing to *Advanced Tech II*, aff'd 2013 U.S. App. LEXIS 22869 (CAFC 2013) ("*Advanced Tech III*")).
[53] *See* Petitioners' Rebuttal Brief, at 37 (citing to letter from Aeolus, "Separate Rate Application in the Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated December 11, 2016 ("Aeolus' SRA"), at Exhibit 7).

be clearly identified as state-owned, own a higher ownership stake in Aeolus than Aeolus reported in its SRA,[54] meaning that Aeolus is a majority state-owned company, making Aeolus ineligible for a separate rate in this review.[55]

- Furthermore, the Department should continue to follow its recent decision in *Truck and Bus Tires Preliminary*[56] to deny Aeolus a separate rate.

Department Position: For the final results and based on record evidence, we continue to find that Aeolus is not eligible for a separate rate. In the *Preliminary Results*, we determined, based on substantial record evidence, that a state-owned enterprise ("SOE"), China National Chemical Corporation, ("China Chem"), is Aeolus's largest and controlling shareholder.[57] As noted above, we would expect any major shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.[58] In the *Preliminary Results*, we identified additional record evidence that we found (and continue to find) supports that expectation in this review.[59]

Specifically, the record shows that Aeolus is 42.58 percent owned by its parent company (China Chemical Rubber Co., Ltd. (also known as, China National Tire & Rubber Corp.) ("China Chem Rubber")), a company which is 100-percent owned by an SOE (China Chem) and supervised by "State-owned Assets Supervision and Administration Commission(s)" ("SASAC(s)"), as reflected in Aeolus' separate rate application.[60] Additionally, during the POR, of the top 10 shareholders, which includes China Chem Rubber, three additional shareholders (Henan Tyre Group Co., Ltd., Jiaozuo Tongliang Assets Management Co., Ltd., and Xiamen Haiyi International Trade Co., Ltd.) owned an additional 6.48 percent of Aeolus. These three companies are also SOEs that are supervised by local SASACs. [61] Thus, the total SOE ownership is 49.06 percent.

Further, Aeolus' Articles of Association ("AoA") describe various responsibilities based on voting rights overseen by shareholders. The shareholders have the ability to nominate board

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[54] *Id*.
[55] *Id*.
[56] *Id*., at 36 (citing *Truck and Bus Tires from the People's Republic of China*, 81 FR 61186 (September 6, 2016) ("*Truck and Bus Preliminary*"), and accompanying PDM at 16).
[57] *See Preliminary Results*, and accompanying PDM at 16. *See also* the Department's memorandum to the file, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Denial of Separate Rate," dated October 5, 2016, at page 2 ("Preliminary Separate Rate Memo").
[58] *See, e.g., Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9 ("*Steel Wire Rod Prelim*"), unchanged in *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014) ("*Steel Wire Rod Final*").
[59] *See Preliminary Results*, and accompanying PDM at 16. *See also* Preliminary Separate Rate Memo.
[60] *See* Aeolus' SRA, at 13 and letter from Aeolus, "Separate Rate Application Supplemental Questionnaire Response in the: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated August 2, 2016 ("Aeolus' Supplemental Response").
[61] *See* Aeolus' SRA, at 13.

members and vote on those nominees' appointment to the board.[62] These nominees select the chairman of the board and senior management.[63] Because Aeolus' controlling shareholders are wholly-owned SOEs,[64] they have the ability to nominate a majority of Aeolus' board members, and in turn control decisions regarding the selection of management. Specifically, Articles 32 and 99 of Aeolus' AoA give shareholders authority over decisions on the operations of the company.[65] In addition, Article 40 gives shareholders the authority to elect and replace board members, and according to Article 97, the board members can also act as the general manager or other senior managers.[66] Finally, Article 147 of Aeolus' AoA provides board members the authority to appoint or remove the general manager and deputy general manager.[67] Therefore, we conclude that Aeolus does not satisfy the criteria demonstrating an absence of *de facto* government control over its export activities. Consequently, we determine Aeolus is ineligible for a separate rate.

Additionally, the website printouts provided by Petitioners show that Aeolus is under the direct control of an SOE, specifically, China Chem Rubber.[68] Despite Aeolus' arguments that the websites are not official company documents that objectively demonstrate "control," we continue to find the documents to be probative as to Aeolus' ownership structure. We find that Aeolus did not explain how specific information in Aeolus' SRA and Aeolus' Supplemental Response directly rebuts the websites in question,[69] which state that Aeolus is under the control of SOE owners.[70] Therefore, the information presented by Petitioners corroborates the ownership information provided by Aeolus.[71]

The Department has a long-standing practice of presuming state control in an NME country and places the burden on exporters requesting a separate rate to demonstrate an absence of *de jure* and *de facto* control.[72] The websites at issue support the presumption of PRC government control over Aeolus and challenge the credibility of Aeolus' request for a separate rate. Therefore, we continue to find that these websites are credible documents supporting our finding that Aeolus is subject to government control through the ownership interests of China Chem

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[62] *Id*., at Exhibit 11.
[63] *Id*.
[64] *Id*.
[65] *Id*.
[66] *Id*.
[67] *See* Preliminary Separate Rate Memo, at 2.
[68] *See* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Rebuttal Information and Deficiency Comments on Aeolus' Separate Rate Application," dated December 30, 2016, at Attachment 3.
[69] *See* Aeolus' Supplemental Response.
[70] *See* Preliminary Separate Rate Memo, at 2.
[71] *See* Aeolus' SRA, at 13 and Exhibit 11.
[72] *See Sigma Corp*, 117 F.3d at 1405-06 ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

Rubber, Henan Tyre Group, Jiaozuo Tongliang Assets Management, and Xiamen Haiyi International Trade. Aeolus is thus not eligible for a separate rate.

B. Whether to Grant GTC a Separate Rate

GTC's Comments

- GTC argues that, contrary to its established policy and practice, the Department only considered two of the four *de facto* control factors.[73] GTC argues that the Department did not analyze all four factors of the *de facto* test or consider the totality of the circumstances.[74]
- GTC argues that the Department has made no indication that it has changed its separate rate test from its longstanding practice established in *Sparklers* and *Silicon Carbide*.[75]
- GTC argues that the Department's analysis misconstrues the term "*de facto* control," resulting in a conclusion that is not supported by law.[76]
- GTC argues that Guiyang Industry Investment Group Co., Ltd. (GIIG) only has a minority stake in its shares (*i.e.*, 25 percent), and that every shareholder individually or jointly can nominate candidates for directors.[77]
- GTC argues that it has repeatedly been granted a separate rate in this proceeding, including the most recent 2012-2013 administrative review.[78]

Petitioners' Rebuttal

- Petitioners argue that we properly determined that GTC and GTCIE are ineligible for a separate rate.

[73] *See* GTC's Case Brief,, at 3-16 (citing *Sparklers* at Comment 1; *see also Silicon Carbide*, at "Separate Rates" section; *see also Furfuryl Alcohol*, at "Separate Rates" section; *see also Structural Steel Beams*, at "Separate Rates" section; *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd., v. United States*, 121 F. Supp. 3d 1263, 1339 (CIT 2015) ("*Jiangsu Jiasheng*"); *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1014 (CAFC 1992); *AMS Assocs. v. United States*, 719 F.3d 1376, 1379 (CAFC 2013) ("*AMS*"); *Advanced Tech. I* at 1347; *Shandong Huanri (Group) General Co., et al. v. United States*, 493 F.Supp.2d 1353, 1357 (CIT 2007) ("*Shandong*")).
[74] *Id.*, at 13-32.
[75] *Id*., at 29 (citing to *Jiangsu Jiasheng* at 1339, *Sigma Corp*. at 1405, *AMS* at 1379, *Sparklers*, and *Silicon Carbide*).
[76] *Id.*, at 18-19 (citing *United States v. Garcia-Andrade*, 2013 U.S. Dist. LEXIS 110759, *15 (S.D. CA 2013); Black's Law Dictionary 479 (9th ed. 2009); *C.f. Ludlum Corp. Pension Plan Trust v. Matty's Superservice*, 156 A.D.2d 339, 548 N.Y.S.2d 292, 293 (2d Dep't 1989)).
[77] *Id.*, at 19-32 (citing Articles 76 and 77 of Articles of Association of GTC, *see* GTC's 1st SQR, at Exhibit 1, and Article 103 of the PRC Company Law, *see* GTC's SAQR, at Exhibit A-3. Also citing GTC's 1st SQR, at Exhibits 6, 7A, 7C, 8, 9 and 12, as well as a similar situation faced by the Department in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625 (November 8, 1994) and accompanying IDM ("*Cased Pencils*")).
[78] *Id*., at 33-35 (citing *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 61291 (October 10, 2014), and accompanying PDM, at 10-11 ("*OTR Tires Preliminary 12-13*"), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012–2013, 80 FR 20197 (April 15 2015) ("*OTR Tires 12-13 Final*")).

- Petitioners argue that GTC is still subject to government review by Guiyang SASAC, and that, accordingly, it cannot show separation from the PRC government.[79]

Department's Position: For the final results, we continue to find, based on record evidence, that GTC is not eligible for a separate rate. In the *Preliminary Results*, we determined, and record evidence supports, that a SOE, GIIG, is GTC largest and controlling shareholder. We would expect any major shareholder, including a government, to control the operations of the company if afforded that ability by its shareholder rights.[80] As noted below, this opportunity is provided to the largest shareholding SOE. In the *Preliminary Results*, we identified additional record evidence that we found and continue to find, supports this expectation with respect to GTC in this review.[81]

Specifically, we found that GTC's affiliate, GTCIE, is 100-percent owned by GTC.[82] GTC is 25.20 percent owned by GIIG, a company which GTC reported is 100-percent owned and supervised by Guiyang SASAC.[83] GTC reported that it is the producer of the subject merchandise and its affiliate, GTCIE, exported the subject merchandise to the United States during the POR. The Department previously collapsed GTC and GTCIE into a single entity in the initial investigation.[84] This decision has been unchallenged in each subsequent review, including the instant review; thus, the Department continues to treat GTC and GTCIE as a single entity in this review. As the sole owner of GTCIE, GTC has the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. In addition, because the Department preliminarily found that Guiyang SASAC is in a position to control the activities of GTC through its 100-percent

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[79] *See* Petitioners' Rebuttal Brief, at 4- 17 (citing to *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM at Comment 38-39 ("*PVLT Tires from the PRC Final*"). *See also OTR Tires Preliminary 12-13*, and accompanying PDM at 10-11; *Truck and Bus Preliminary*, and accompanying PDM at 16. *See* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Rebuttal Information and Deficiency Comments regarding Guizhou's Section A Questionnaire Response," dated February 1, 2016 at Attachment 1, 5 ("Petitioners' GTC SAQR Rebuttal"), (citing memorandum from the Department, "Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China, Preliminary Separate Rate Determinations," dated January 20, 2015) at 5 citing letter from GTC submitted on PVLT Tires from the PRC Final, "Separate Rate Application Supplemental Questionnaire Response in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated December 17, 2014 ("GTC's PVLT SSRA"));; GTC's Case Brief, at 25-34; GTC's 2nd SQR, at 52 and Exhibits 3B and 7; GTC's SAQR at Exhibit 3, 7, 10; letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Rebuttal Information and Deficiency Comments regarding Guizhou's Section A Questionnaire Response," dated June 6, 2016, at Attachment 1 ("Petitioners' 2nd SAQR Rebuttal"); GTC's SAQR, at 11-12 and Exhibit 3; *Advanced Tech. I* at 1357; *Cased Pencils*, 59 FR at 55627-28).
[80] *See, e.g., Steel Wire Rod Prelim* and accompanying PDM at 5-9, unchanged in *Steel Wire Rod Final*.
[81] *See Preliminary Results*, and accompanying PDM at 16. *See also* Preliminary Separate Rate Memo, at 2-3.
[82] *See* GTC's SAQR at 2.
[83] *See* Preliminary Separate Rate Memorandum, at 2-3; *see also* GTC's SAQR, at Exhibit A-7. GTC is the producer, and GTCIE is its affiliate in charge of export sales.
[84] *See OTR Tires LTFV Determination*.

ownership of GTC's largest shareholder, GIIG, we find that, because GTC owns GTCIE, GTCIE is also controlled by Guiyang SASAC.[85]

Our continued denial of a separate rate to GTC in this review is further supported by events that occurred at GTC's shareholder meetings in 2012 and 2015 related to the selection of directors and profit distribution.[86] Record evidence shows that GTC elected members of its board of directors through shareholders' meetings not available to all shareholders.[87] Because GIIG circumvented a more inclusive board election process, it was able to elect specific board members of its preference and preferred profit distribution schemes.[88] Based on these findings, we do not find any practical difference between holding shareholder elections to select board members, or the Guiyang SASAC, through GIIG, directly appointing board members by direct decree. Therefore, the fact that those shareholder meetings complied with the relevant laws and the AoA, as GTC argues, is irrelevant in the instant case.[89] Thus, the Department finds that GIIG appointed a majority of the members of GTC's board of directors as evidenced in the voting record for the shareholder meetings during the POR.[90] Additionally, the voting records show that GIIG controlled profit distribution during the POR.[91]

GTC asserts that its AoA insulates it from government interference through its prescribed nomination process for its board of directors and senior management. However, the Department finds that GTC's nomination and voting processes for directors and management under Articles 40, 43, 83, and 117 of the AoA allowed Guiyang SASAC, through GIIG, to influence the board nomination process.[92] Article 83 allows only shareholders with 10 percent or more of voting shares held individually or jointly to nominate directors.[93] Moreover, as GIIG is the only shareholder with more than 10 percent ownership, record evidence fails to demonstrate any nominations of directors without GIIG involvement.[94] Moreover, record evidence suggests that no other individual shareholder owns the requisite percentage to nominate members to GTC's board.[95] As a result of its position, GIIG exercises influence over the selection of GTC's board. Furthermore, certain articles allow GIIG to remain in a supervisory position over GTC despite its diminished ownership. Specifically, as noted above, Article 32(3) of GTC's AoA allows certain shareholders, including GIIG, the ability to supervise the operations of the Company and put forward suggestions and raise inquiries.[96] Thus, other than its own restraint, nothing in GTC's AoA prevents GIIG from engaging in behavior that interferes with the autonomy of GTC, and in

[85] *Id*.
[86] *See* GTC's 1st SQR, at 3 and Exhibits 6 and 7. For further discussion, including the business proprietary information, *see* the Preliminary Separate Rate Memo.
[87] *See* GTC's 3rd SQR, at 3 and Exhibits 2, 4, 6, 7, and 8.
[88] *See* Preliminary Separate Rate Memo, at 2-3, where the Department detailed GIIG's control over the nomination and selection of board members in during the POR.
[89] *See* GTC's Case Brief, at 20 and 27.
[90] *See* Preliminary Separate Rate Memo for business proprietary information detailing this control.
[91] *Id*.
[92] *See* GTC's 3rd SQR, at 2 and Exhibit 2, 4, 6, 7, and 8; *see also* Preliminary Separate Rate Memo, at 2-3.
[93] *Id*.
[94] *Id*.
[95] *See* GTC's 1st SQR at Exhibit 1.
[96] *Id*.

turn its 100-percent owned affiliate GTCIE.[97] Additionally, the Department notes that certain BPI record evidence suggests that GIIG exercised certain rights under AoA provisions that effectively controlled the distribution of profits, during the POR.[98]

Furthermore, GTC argues that Articles 40, 43, 83, and 117 of the AoA support its assertion of strict voting procedures, which allow voting access through cumulative voting and online voting to all shareholders, are irrelevant to the Department's finding of the GIIG's *de facto* control over the selection of management. As noted above, the provisions cited did little to prevent GIIG from electing the board members of its preference.[99] Neither GTC's cumulative voting nor on-line voting prevented GIIG from circumventing the election outcome by requesting a special shareholder meeting, in which it elected its preferred board members to GTC's board of directors, in turn allowing its influence to flow to GTC's 100-percent owned affiliate GTCIE.[100]

Moreover, though we acknowledge that the AoA cited by GTC on its surface appears to place safeguards against undue influence by large shareholders in the selection of GTC's senior managers, the record demonstrates that those safeguards were unsuccessful in the instant case. GIIG was ultimately able to dominate GTC's decision-making process, despite such safeguards, and appoint its preferred members to GTC's board, as well as control profit distribution.[101] In the instant case, the Department finds the provisions do not ensure the absence of the *de facto* control of the selection of management or profit distribution schemes by certain shareholders. Specifically, the provisions still allow Guiyang SASAC through GIIG, the authority to make decisions for GTC, which appoints GTCIE's senior management, as well as sets GTCIE's business operations agenda.[102] Therefore, we continue to find that GTC is not eligible for a separate rate in this review.

Furthermore, the Department rejects Petitioners' assertion that we deny GTC's separate rate because of unsubstantiated claims of Guiyang SASAC's review during the POR. Petitioners have failed to demonstrate their claim through record evidence. Specifically, most of the documents placed on the record supporting Petitioners' allegations of Guiyang SASAC's performance review pre-date the POR, dating back to 2013. They are thus not pertinent to this review. Accordingly, our decision is wholly based on our findings as discussed above. Thus, the Department sees no need to analyze evidence pre-dating the POR. Additionally, the Department notes, because Guiyang SASAC's October 2015 notice announcing increased annual supervision and inspection of administered enterprises fails to identify specific companies subject to annual supervision and inspection this information was not used in our determination that GTCIE is under PRC government control.[103]

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[97] *Id*.
[98] *See* GTC's 2nd SQR at Exhibit 7.
[99] *Id*.; *see also* Preliminary Separate Rate Memo, at 3 (citing GTC's 1st SQR, at 3 and Exhibits 2, 4, 6, 7, and 8).
[100] *Id*.
[101] *See* GTC's 2nd SQR at Exhibit 7.
[102] *See* GTC's SAQR at 11-12 and Exhibit A-2.
[103] *See* Petitioners' Rebuttal Brief at 7 (citing Petitioners' Rebuttal Information and Deficiency Comments regarding Guizhou's Supplemental Section A Questionnaire Response (June 6, 2016)).

C. Whether to Grant Jinhaoyang a Separate Rate

Petitioners' Comments

- Petitioners argue that the Department erred in granting Jinhaoyang a separate rate and failed to explain why it found Jinhaoyang eligible for a separate rate in this review.[104]
- Petitioners argue that Jinhaoyang did not act as a typical exporter, *i.e.*, finding its own U.S. customers, but acted as a middle-man for a formerly reviewed respondent for which we denied a separate rate and included in the PRC-wide entity.[105]
- Petitioners argue that Jinhaoyang plays no role in setting the essential terms of its sales.[106]
- The supplier (*i.e.*, the PRC-producer of OTR tires previously denied a separate rate) was aware of the destination of Jinhaoyang's U.S. sales, and set the essential terms of the sales, acting as the price discriminator.[107]
- Petitioners argue that because the supplier is funneling subject merchandise through Jinhaoyang, we should apply the knowledge test due to the unique circumstances in this case.[108]

Jinhaoyang's Rebuttal

- Jinhaoyang argues that we correctly granted Jinhaoyang separate rate status, recognizing that the company is independent from government control, in law and in fact.[109]
- Jinhaoyang argues that Petitioners fail to present a legal argument that Jinhaoyang is not the price discriminator for its contracts with its U.S. customers.[110]

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[104] *See* Petitioners' Case Brief at 19 (citing letter from Jinhaoyang, "Separate Rate Application of Qingdao Jinhaoyang International Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 7, 2015 ("Jinhaoyang's SRA"), at Exhibit II.6; and letter from Jinhaoyang, "New Pneumatic Off-the-Road Tires from the People's Republic of China (2014-2015): Second Supplemental Questionnaire Response," dated September 27, 2016 ("Jinhaoyang's 2nd SSRA"), at 8-9).

[105] *Id*., at 22-24 (citing *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011), and accompanying IDM at Comment 1; *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012), and accompanying IDM at Comment 8; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 31; *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529 (April 10, 2012), and accompanying IDM at Comment 1; *Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011*, 78 FR 35249 (June 12, 2013), and accompanying IDM at Comment 3*; Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014*, 80 FR 77321 (December 14, 2015), and accompanying IDM at 10)).

[106] *Id*.

[107] *Id*.

[108] *Id*.

[109] *See* Jinhaoyang's Rebuttal Brief, at 3-4 (citing Jinhaoyang's SRA, at Exhibit IV.B.8; Jinhaoyang's 2nd SSRA, at 6 and Exhibits SQ2-10 and Exhibit SQ2-14).

[110] *Id*., at 5-7 (citing Petitioners' Case Brief, at 23; *Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying IDM at Comment 17; *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1280-81 (CIT 2013)).

Department's Position: For the final results, we continue to find, based on substantial record evidence, that Jinhaoyang is eligible for a separate rate.[111] Jinhaoyang timely submitted a complete separate rate application, and based on our review, we preliminarily found that Jinhaoyang met the criteria for separate rate status and, thus, assigned Jinhaoyang a separate rate.[112] Since the issuance of the *Preliminary Results*, we have not received any information that provides a basis for reconsideration of this determination.

We disagree with Petitioners' argument that Jinhaoyang acts as a middle-man for a producer that the Department previously denied a separate rate and included in the PRC-wide entity in a prior proceeding relevant to this *Order*.[113] The record shows that the supplier is only one of multiple manufacturers of subject merchandise from which Jinhaoyang purchases its merchandise.[114] Further, the record shows that Jinhaoyang has been operating under its current business model prior to the Department's denial of the supplier separate rate.[115] In addition, an agency relationship may exist either explicitly (*e.g.*, through a contract) or implicitly (*i.e.*, *de facto*).[116] In the instant case, there is no record evidence suggesting that an explicit agency agreement exists between Jinhaoyang and the supplier. Moreover, based on agency principles, there is no indication of an implicit agency agreement.[117] In the instant case, the record demonstrates that Jinhaoyang only acts on its own behalf, following its normal course of business, and does not act for the benefit of the supplier.[118] Jinhaoyang has multiple suppliers of subject merchandise, and offers their products to U.S. customers in the same manner as it offers the supplier's products.[119] Additionally, Jinhaoyang began doing business with its U.S. customer well before the supplier was denied a separate rate.[120]

With respect to Petitioners' argument that the Department should apply the "knowledge test," we find that although the knowledge test is a framework that is of use in identifying the first party in a transaction chain with knowledge of U.S. destination where there are multiple entities, other than the unaffiliated U.S. customer, involved in such chain prior to importation,[121] we find that this framework is not relevant to the question of whether Jinhaoyang is entitled to a separate rate. Further, under the Department's longstanding practice, the knowledge test applies only to

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[111] *See* PDM, at 11-15.
[112] *Id*.
[113] The identity of the producer has been designated business proprietary information; accordingly we refer to it only as the "supplier" in this document.
[114] *See* letter from Jinhaoyang, "Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 6, 2016 ("Jinhaoyang 1st SSRA") and Jinhaoyang's 2nd SSRA.
[115] *See* Jinhaoyang's SRA.
[116] See Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Antidumping Duty Administrative Review, 67 FR 1715 (January 14, 2002) and accompanying IDM ("SSSS in Coils"), at Comment 1.
[117] *Id.* Generally, when determining whether agency exists, we look to whether the agent's actions are on his own behalf or of that of the principal.
[118] *See* Jinhaoyang's SRA, Jinhaoyang's 1st SQR, and Jinhaoyang's 2nd SQR.
[119] *See SSSS in Coils*, at Comment 1.
[120] *See* Jinhaoyang's 1st SQR, at SQ-2; Jinhaoyang's 2nd SQR, at SQ-9.
[121] See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299 (July 12, 2006), and accompanying IDM at Comment 1.

exporters that have dealings with entities outside of the NME country, and the Department does not apply the knowledge test to transactions between parties within the PRC.[122]

Accordingly, we continue to find Jinhaoyang eligible for a separate rate because its separate rate application shows absence of both *de jure* and *de facto* government control over its export activities and because record evidence demonstrates through cooperative agreements, sales contracts, and other communications that Jinhaoyang is the price discriminator for its sales to unaffiliated customers in the United States.[123]

D. Whether to Grant Zhongce a Separate Rate

Petitioners' Comments

- Petitioners argue that Zhongce's largest shareholders are ultimately controlled by the PRC government.[124]
- Petitioners argue that, although Zhongce conceded that two of its largest shareholders are state-controlled,[125] the number of shareholders that are majority SASAC-controlled is higher than Zhongce reported.[126] Petitioners state that several of Zhongce's largest shareholders, *i.e.*, those with the power to nominate directors, are majority-owned by a SASAC entity.[127]
- Petitioners argue that Zhongce's management is interconnected with a SASAC entity.[128]

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[122] *See, e.g., Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying Issues and Decision Memorandum at Comment 17 ("Under the Department's longstanding practice, the Department will not base export price on internal transactions between two companies located in the NME country. Moreover, a producer's knowledge of the ultimate destination is an issue restricted in its application in NME cases because the knowledge test applies only to exporters that have dealings with entities outside of the NME country."), citing *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004) and accompanying IDM at Comment 2 (stating that the knowledge test "is restricted with regard to NME cases since the Department does not base export price on internal transactions between two companies located in the NME country"); *see also Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23759 (May 1, 1997).
[123] *See* Letter from Jinhaoyang, "Jinhaoyang's Second SRA Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," at 2-3 and Exhibits SQ2-3, SQ2-4, SQ2-9, and SQ-10, dated September 6, 2016.
[124] *See* Petitioners' Case Brief, at 18-19 (citing to Zhongce SRA at 11-13; Petitioners' submission, "Petitioners' Rebuttal Information and Deficiency Comments on Zhongce's Separate Rate Application, at Attachment 3, dated Dec. 30, 2015 ("Petitioners' 1st Rebuttal"); letter from Petitioners, "Rebuttal Information to Zhongce's Second Supplemental Questionnaire Response," at 2-3 and Attachments 1-4, dated September 30, 2016) ("Petitioners' 2nd SQR Rebuttal")).
[125] *Id.*, at 15-16 (citing to Zhongce SRA at 11-13).
[126] *Id.*, at 18-19 (citing to Petitioners' 2nd SQR Rebuttal, at 2-3 and Attachment 1-4).
[127] *Id*.
[128] *See* Petitioners' Case Brief, at 17 (citing to letter from Zhongce, "Zhongce Rubber Group Company Limited's ("Zhongce"), Second Supplemental Questionnaire Response," dated September 27, 2016 ("Zhongce's 2nd SSRA"), at 4).

- Petitioners further argue that a majority of Zhongce's board is appointed by SASAC entities, making Zhongce ineligible for a separate rate as a matter of law.[129]

Zhongce's Rebuttal

- Zhongce argues that we should follow our recent determination in the *Truck and Bus Tires Preliminary*, as well as the *Preliminary Results* in the current review, and continue to find that Zhongce is eligible for a separate rate.[130]
- Zhongce argues that Petitioners' arguments ignore fundamental changes in Zhongce's equity structure, including changes in the process of selecting its Chairman of the Board.[131]
- Zhongce argues that Petitioners' attempts to link state-owned entities to Zhongce's other shareholders are baseless. Zhongce asserts, for example, that one of the shareholders Petitioners assert has control over its management selection process has multiple layers of ownership between it and the relevant SOEs.[132]
- Petitioners' remaining argument, regarding Zhongce's Board members being interconnected with a SASAC, provides no rationale for the Department to revisit the *Preliminary Results* to grant Zhongce a separate rate.[133]

Department's Position: For the final results, we continue to find, based on record evidence, that Zhongce is eligible for a separate rate.[134] Zhongce submitted a complete and timely separate rate application, and based upon our review of this application, as well as Zhongce's supplemental questionnaire responses, we preliminarily found that Zhongce met the criteria for separate rate status and, thus, assigned Zhongce a separate rate in the *Preliminary Results*.[135] Since the issuance of the *Preliminary Results*, we have not received any information that provides a basis for reconsideration of this determination.

We disagree with Petitioners' argument that the number of shareholders that are majority SASAC-controlled is higher than Zhongce reported. Petitioners do not point to any record evidence in support of their argument, nor does the record contain such information, that beyond

[129] *See* Petitioners' Case Brief, at 18 (citing to letter from Zhongce, "Zhongce's First Supplemental Questionnaire Response," dated August 2, 2016), (Zhongce 1st SSRA")"), at 2-3 (citing *Ammonium Sulfate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 78776 (November 9, 2016) and accompanying PDM at 5-6; *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016), and accompanying IDM at Comment 11; *OTR Tires Preliminary 12-13* and accompanying PDM at 10, unchanged in *OTR Tires 12-13 Final*).
[130] *See* Zhongce's Rebuttal Brief, at 1-2 (citing to *Truck and Bus Preliminary* and accompanying PDM at the "Separate Rates" section).
[131] *Id.*, at 2 (citing to Zhongce's SRA, at 11-13 and Zhongce 1st SSRA, at 1-3).
[132] *Id.*, at 3-5 (citing Zhongce's 1st SSRA, at 2 and Exhibit S-8; Zhongce's 2nd SSRA, at Attachment 1-3, 5-7).
[133] *Id.*, at 5-6 (citing *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China*, 79 FR 76970 (December 23, 2014), and accompanying IDM at Comment 6 (the CIT rejected the same kind of arguments Petitioner make in the instate case, holding that "{b}eyond emphasizing the legal and practical possibility that the company officials who are also in some capacity government officials could have influenced these companies' export sales negotiations," {Petitioner} had "not pointed to any specific evidence that, in influencing the companies' operations pursuant to their duties as company officials)).
[134] *See* PDM, at 11-15.
[135] *Id*.

the entities that Zhongce acknowledges as SOEs, within its separate rate application are SASAC controlled.[136] The record shows that Zhongce does have shareholders that are SOEs, as reflected in Zhongce's separate rate application.[137] However, the record also shows that those SOEs cannot control their owners, therefore, the PRC government cannot control Zhongce through these two shareholders.[138] Based on record evidence, we find that the PRC government control of Zhongce is limited through its shareholder ownership.[139] Also, the PRC government does not have majority control of Zhongce's board through its SOE ownership because the number of SOE board members is less than the majority needed to have control over the decision making process .[140] In addition, record evidence shows that each board member has equal voting power; thus, the SASAC entities are unable to exercise control over Zhongce's business operations or its selection of management through dominance of Zhongce's board.[141] Therefore, we find that Zhongce is eligible for a separate rate.

Furthermore, Zhongce's remaining largest shareholders, which the Petitioners assert are controlled by SASACs, have multiple entities between them and Zhongce's shareholders of record.[142] Furthermore, Petitioners fail to demonstrate how these tenuous connections with the PRC government impart the PRC government with control over Zhongce's shareholders, not to mention Zhongce. Moreover, Petitioners fail to show record evidence demonstrating that the PRC government controls Zhongce by other means. Accordingly, we continue to find Zhongce eligible for a separate rate because its separate rate application shows absence of both *de jure* and *de facto* government control over its export activities.[143]

Comment 2: Calculation of the Cost of Tube and Flap Inputs for Xugong

<u>Petitioners' Comments</u>

- The programming language used by the Department to calculate flap weight (*i.e.*, from the difference between the net tube and flap weight and the reported tube weight) used a variable that only incorporated tube weight for self-produced (*i.e.*, Hanbang) tubes, but which would result in a missing value if the tubes were purchased. As a result, for sales of all tires with tubes purchased from unrelated parties, the value calculated for the flap was incorrectly set to zero, which, through a function of the programming, zeroed out the total deduction as well. Petitioners provide suggested language to correct this inadvertent error.[144]
- Furthermore, though the programming language sets up the language to calculate these tube and flap costs for the stated purpose of the deduction from U.S. price, as appropriate (albeit

[136] *See* Zhongce's SRA dated March 25, 2016, at 13-14.
[137] *Id*.
[138] *Id.*
[139] *Id.*, at Exhibit 4.
[140] *Id.*, at Exhibit 10.
[141] *Id.*, at Exhibit 8A.
[142] *See* Zhongce's 1st SQR.
[143] *Id.*
[144] *Id*., at 4 (citing to Memorandum from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated October 5, 2016 ("Xugong Preliminary Analysis Memo")).

with the aforementioned error), the programming language necessary to make the actual deduction of these calculated costs from U.S. price was omitted later in the calculations and, thus, no deduction was actually made. Petitioners provide suggested language to correct for this error.[145]

No interested party provided rebuttal comment on this issue.

Department's Position: In the *Preliminary Results*, for Xugong's sales of an OTR tire "set" (which includes both the subject tire and accompanying non-subject tire tubes and flaps) the Department adjusted the reported U.S. sales price to remove the cost of the tube and flap products. Specifically, to calculate the weight for both the tube and flap, the Department subtracted the net tire weight from the gross weight of the "set," as reported. Because tube weights were reported, the Department was then able to calculate the flap weights by subtracting the reported tube weight from the tube and flap weight (*i.e.*, "set" weight net of tire weight). For flaps, which were all purchased from an unaffiliated supplier, the Department applied a surrogate value to derive the cost of the flap to deduct from the U.S. price. For tubes, which were both purchased from other suppliers and produced by an affiliate, Hanbang, the Department either applied a surrogate value (if the former) or calculated the cost using Hanbang's factors of production ("FOPs") (if the latter) to deduct from U.S. price. This methodology was consistent with that applied in prior reviews.

We have reviewed the allegation and our preliminary methodology and agree with Petitioners that we made two inadvertent errors by not subtracting the tube and flap from all of the applicable sales in our calculations and by not providing the programming language to apply the deduction as intended. We are correcting these errors in the final margin calculation for Xugong.[146]

Comment 3: Surrogate Value for Smoked Sheet Natural Rubber

<u>Petitioners' Comments</u>

- In the *Preliminary Results*, the Department valued natural rubber inputs using the average of daily prices reported by the Rubber Research Institute of Thailand ("RRIT").[147] The RRIT report publishes prices for two types of natural rubber: ribbed smoked sheet ("RSS") at USD \$1.71/kg and Technically Specified Natural Rubber ("TSR") at USD \$1.50/kg.[148]
- Though the Department selected the RSS data as a surrogate, as is appropriate, it appears that the TSR value was inadvertently used. The Department should correct this error by using the RSS value for the final determination.[149]

[145] *See* Petitioners' Case Brief, at 4.
[146] *See* Xugong's Final Analysis Memo, at 2-3
[147] *See* Petitioners' Case Brief, at 5 (citing to the Department's memorandum, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," dated October 5, 2016 ("Preliminary SV Memo"), at Attachment I (surrogate value for RSS3)).
[148] *Id*.
[149] *See* Petitioners' Case Brief, at 5.

No interested party provided rebuttal comment on this issue.

Department's Position: Petitioners correctly note that for the *Preliminary Results*, we intended to apply the average value from the RSS price data reported by the RRIT to all natural rubber inputs, but incorrectly transposed the price for TSR into the surrogate value information.[150] Accordingly, we corrected this error for the final results by valuing the natural rubber input with the RSS data as submitted by Petitioners.[151]

Comment 4: Surrogate Value for Inland Truck Freight

Background

- To value inland truck freight, Petitioners submitted to the record the World Bank's *Doing Business 2015: Thailand, Trading Across Borders* ("*DB 2015 Thailand*") report,[152] as used by the Department in the prior 2013-2014 review, whereas respondents provided the World Bank's *Doing Business 2016: Thailand, Trading Across Borders* ("*DB 2016 Thailand*") report.[153] The Department used the price derived from the *DB 2016 Thailand* report to value inland truck freight for the *Preliminary Results*.[154]

Petitioners' Comments

- Though the transport data in *DB 2016 Thailand* is contemporaneous with the POR, it does not provide the most relevant data, and the Department failed to address shortcomings of the *DB 2016 Thailand* information in the *Preliminary Results*.[155]
- Whereas in *DB 2015 Thailand* the distance the goods traveled was only described as from Bangkok to the Port of Bangkok, the World Bank employed a new methodology in *DB 2016 Thailand* involving a route between Bangkok and the port of Laem Chabang, but did not specify that transportation was by truck.[156] Specifically, *DB 2016 Thailand* provides the cost to transport a set shipment of goods over the reported route "by the most widely used mode of transport," but does not specify what mode that is and, thus, may not be specific to truck freight.[157]

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[150] *See* Preliminary SV Memo, at Attachment I.
[151] *See* Final SV Memo, at 2-3 (citing letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' First Surrogate Value Submission," dated April 7, 2016 ("Petitioners' Initial SV Submission"), at Attachment 3).
[152] *See* Petitioners' Initial SV Submission, at Attachment 10.
[153] *See* letter from GTC titled, GTC First Surrogate Value Submission: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China, dated April 7, 2016 ("GTC's Initial SV Submission"), at Exhibit 7B.
[154] *See* Preliminary SV Memo.
[155] *See* Petitioners' Case Brief, at 6.
[156] *Id.*, at 6-7 (citing *World Bank Doing Business, Trading Across Borders Methodology,* at 1, included in letter from Petitioners titled, Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' First Rebuttal Surrogate Value Submission, dated April 18, 2016 ("Petitioners' 1st Rebuttal SV Submission"), at Attachment 7).
[157] *Id*.

- Petitioners cite to evidence on the record (CMA CGM's Thailand Import Quick Guide) which they purport indicates that the mode of freight considered in *DB 2016 Thailand* was likely train transport.[158]
- Petitioners assert that the conclusion that *DB 2016 Thailand* incorporated rail freight is further confirmed by the transport speed of 52.9 km/hour identified in the report, which Petitioners argue could only be for rail, based on traffic conditions in Bangkok.[159]

- In contrast, according to Petitioners, *DB 2015 Thailand* used a route between Bangkok and the Port of Bangkok. Nothing on the record suggests that this route is representative of a mode of transport other than a truck route, so it is an appropriate source for truck freight.[160]

<u>GTC's and Xugong's Rebuttal</u>

- Respondents note that *DB 2016 Thailand* is publicly available and contemporaneous with the POR. The Department has used this report to value inland truck freight in multiple recent cases.[161]
- GTC argues that the record evidence, and the well-established parameters for calculating a truck freight surrogate value, clearly indicate that *DB 2016 Thailand* is the best available source for valuing truck freight in this proceeding. Specifically, it provides a contemporaneous, specific cost to transport a specific weight of cargo allocated over a specific distance. It also specifically identifies the port of exit as "Laem Chabang" port, essentially eliminating any ambiguity with respect to distance traveled, thus correcting for the ambiguity of *DB 2015 Thailand* with respect to the port of exit.[162]
- Respondents assert that Petitioners' allegation that the 2016 report's freight rate applies to rail freight, rather than truck freight, is nothing more than speculation. Though the World Bank stated in *DB 2016 Thailand* that the inland transportation was for a route between Bangkok and Laem Chabang port using "the most widely used mode of transport," it did not specify what mode of transport was used. Moreover, the same ambiguity applies to the mode of transport in *DB 2015 Thailand*.[163]

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[158] *Id.*, at 7 (citing the CMA CGM, Thailand Import Quick Guide, included in Petitioners' 1st Rebuttal SV Submission, at Attachments 8-9).

[159] *Id.*, at 7-8 (citing a *Driving in Thailand* report included in Attachment 2 to Petitioners' Second Surrogate Value Submission (in support of Bangkok's traffic congestion) and excerpts from the World Bank's *Doing Business* 2016 reports for Indonesia, Lao PDR, Malaysia, and Philippines included in Attachment 1 to Petitioners' Second Surrogate Value Submission (as examples of other South Asian countries with urban traffic congestion and which reported much lower traffic speeds for inland transport reported under the same general methodology in respective *Doing Business* 2016 reports)).

[160] *Id.*, at 8.

[161] See Xugong's Rebuttal Brief, at 5-6 (citing *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 97435 (November 4, 2016) ("*Steel Wire Hangers 14-15 Prelim*"), at 18*; Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89045 (December 5, 2016) ("*Diamond Sawblades 14-15 Prelim*"), at 20; and *Large Residential Washers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 90776 (December 13, 2016) ("*Washers from the PRC*"). *See also* GTC's Brief, at 3, citing *Steel Wire Hangers 14-15 Prelim* and *Diamond Sawblades 14-15 Prelim*).

[162] *See* GTC's Rebuttal Brief, at 2-3.

[163] *See* GTC's Rebuttal Brief, at 4-5 and Xugong's Rebuttal Brief, at 7 (citing Petitioners' 1st Rebuttal SV Submission at Attachment 8).

- Respondents argue that the CMA CGM's Thailand Import Quick Guide cited by Petitioners has no connection or relevance to *DB 2016 Thailand*. Petitioners provide no evidence that this is a contributor or source to the report, and it has no bearing on the underlying data. Moreover, even if the report were presumed relevant, it does not support Petitioners' argument, as only 9.9 percent of Laem Chabang cargo moved by rail.[164]
- Xugong also argues that the use of rail is not confirmed by the transport speed of 52.9 km/hour, and that Bangkok's notoriously poor traffic conditions have little relevance as Laem Chabang is 129 kilometers from Bangkok, *i.e.*, much of the travel would be outside Bangkok.[165]
- Any fair comparison of the 2016 and 2015 reports based on the record evidence in this proceeding clearly demonstrates that *DB 2016 Thailand* is the best available information for valuing truck freight. The express deficiencies and ambiguities in *DB 2015 Thailand* (*i.e.*, the port of exit, non-contemporaneity, and lack of information regarding industrial zones) undoubtedly outweigh any alleged ambiguity with respect to the method of transport which might exist in *DB 2016 Thailand*.[166]

Department's Position: For the final results, we continue to value truck freight based on information in *DB 2016 Thailand*. As an initial matter, selection of this information is consistent with the Department's use of this source to value inland freight in recent determinations concerning the PRC where Thailand was selected as the primary surrogate country. In addition to the preliminary determinations cited by Xugong and GTC,[167] we note that several final determinations have been issued since the briefing stage of this review which have utilized *DB 2016 Thailand* to value inland truck freight. These determinations found that *DB 2016 Thailand* provided all necessary information for calculating a surrogate value.[168]

In the instant case, Petitioners, who advocate for the use of similar information from *DB 2015 Thailand* to value inland freight, assert that the "shortcomings" of *DB 2016 Thailand* which make it unusable are derived from the change in methodology between the 2015 and 2016 reports, specifically that the port of exit identified in the underlying data changed from "Port: Bangkok" to "Laem Chabang." Petitioners provide no direct support as to why a change in methodology with respect to identification of the port of exit, without any other substantive methodological change identified, constitutes a shortcoming on its own. Rather, Petitioners' concerns are based on a presumption that freight costs in *DB 2016 Thailand* are based on rail

[164] *See* GTC's Rebuttal Brief, at 4-5 and Xugong's Rebuttal Brief, at 7-8 (citing Petitioners' 1st Rebuttal SV Submission, at Attachment 8). The report states that "Lat Krabang ICD is the Bangkok base terminal for most shipping lines who have Transpacific and/or Europe main line vessel direct call services to Laem Chabang," and that just 10% of its "import cargoes are destined for Lat Krabang ICD, 99% of which moved by rail."
[165] *See* Xugong's Rebuttal Brief, at 7-8.
[166] *See* GTC's Rebuttal Brief, at 5-6 and Xugong's Rebuttal Brief, at 9-12.
[167] *See* Xugong Rebuttal Brief, at 6, and GTC Rebuttal Brief, at 3, citing *Steel Wire Hangers 14-15 Prelim*, at 18; *Diamond Sawblades 14-15 Prelim*, at 20; and *Washers from the PRC*. *See also* GTC's Brief, at 3.
[168] *See Truck and Bus Tires From the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) and accompanying IDM ("*Truck and Bus Tires*"), at Comment 17. *See also Washers from the PRC* (in which the selection of the 2016 report was not challenged by parties).

freight, as opposed to truck freight, a position derived from two pieces of allegedly corroborative information from CMA CGM's Thailand Import Quick Guide.[169]

First, we find that the information referenced by Petitioners is insufficient to compel the conclusion that *DB 2016 Thailand* utilized rail freight. With respect to the CMA CGM's Thailand Import Quick Guide, there is no evidence that the information contained in this document was used in, or representative of, the data underlying *DB 2016 Thailand*. Indeed, the two domestic freight costs identified in *DB 2016 Thailand* are for average costs for exports of a certain product from a standardized company location in Bangkok to the port of Laem Chabang and average costs for imports of another containerized product from the port of Laem Chabang to a standardized company in Bangkok.[170] This suggests that the *DB 2016 Thailand* report information is specific to an international freight provider's export transport costs to move a different product from a company to port and import transport costs to move one product from port to company. On the other hand, the CMA CGM's costs that Petitioners cite to corroborate their argument represent the transport from port to container depot. The *DB 2016 Thailand* report reflects a port to company cost, and the CMA CGM report reflects a port to middle man cost. Therefore, the movement of containers between the port and international container depot is not precisely analogous to the information contained in the report.

Moreover, we agree with Xugong and GTC that a statement from a single freight provider indicating that most shipping lines "who have Transpacific and/or Europe main line vessel direct call services to Laem Chabang" ship imported containers by rail to the Lat Krabang base terminal in Bangkok does not stand for the proposition that inland container freight costs between Bangkok and the Laem Chabang port in *DB 2016 Thailand* must be reflective of the cost of rail transport.[171] Not only is this statement by a single shipping company regarding the activities of "most" carriers speculative and unsupported by further documentation, but even if presumed to be accurate, it only leads to the conclusion that rail freight is the predominant mode of inland freight used for containers of import cargo from a subset of freight providers for a route to a single international container depot destination. There is no evidence that the freight costs underlying *DB 2016 Thailand* are inclusive of such a specific subset of freight movement, let alone predominantly comprised of freight representative of movement of only import cargoes from certain providers to a single location. Indeed, as Xugong and GTC note, the CMA CGM's Thailand Import Quick Guide itself indicates that such freight movement represents only ten percent of CMA CGM's freight movement for just import cargoes.[172]

Moreover, Petitioners' argument that the 52.9 kilometer/hour average speed of inland freight for export from a standardized company location in Bangkok to the port of Laem Chabang cited in

[169] Demonstrating that rail is the predominant mode of transport for one international freight supplier for containers moved between Laem Chabang port and an international container depot in Bangkok) and the average speed of the freight reported in the DB 2016 Thailand study (52.9 km/hour), and Petitioners presume this is too fast for Bangkok traffic.
[170] As the total average freight expense and total average distance was equivalent between the datasets, the average costs reported were the same regardless of whether the shipment was for export or import.
[171] *See* Petitioners' First Rebuttal Surrogate Value Submission, at Attachment 8.
[172] *Id.*, ("Currently, 10% of our import cargoes are destined for Lat Krabang ICD").

DB 2016 Thailand reflects rail transport (in light of Bangkok's traffic congestion)[173] is plainly speculative and lacks basis in the record evidence. The simple fact that Bangkok and its environs have "notorious traffic" does not compel the conclusion that the 129-kilometer roadway between Bangkok and Laem Chabang is so congested that an average speed of 52.9 Km/h (approximately 33 miles per hour) attained on this route must suggest a mode of transportation other than truck freight. Moreover, the contributors to *DB 2016 Thailand* shipped cargo from all around Bangkok to a port 129 kilometers away, calling into question the degree to which they would be impacted by urban Bangkok traffic. Therefore, *DB 2016 Thailand* represents an accurate source to value inland truck freight.[174]

Second, we disagree with Petitioners' contention that *DB 2015 Thailand* is preferable to *DB 2016 Thailand* because the 2015 data has no ambiguity regarding the mode of transport utilized. This conclusion is based on the premise that the port of exit in *DB 2015 Thailand* is listed as "Bangkok," and that it is comprised of price data for shipment of goods over the reported route "by the most widely used mode of transport," which, though ambiguous, does not explicitly specify rail freight.[175] As noted above, we find that there is insufficient record evidence to support Petitioners' assertion that *DB 2016 Thailand* utilized rail freight costs to and from the port of Laem Chabang. That the record lacks information regarding the mode of freight in the 2015 study simply reflects the fact that parties did not submit information for this purpose, but provides no insight as to the modal composition of the underlying data in relation to that of the 2016 study, particularly in consideration of the above findings with respect to the relevance of the information provided by Petitioners with respect to the 2016 study. Though the Department will not revisit the details of the issue regarding the location of the port of exit in *DB 2015 Thailand* from the prior review, we note that the Department's presumption that the port of exit identified as "Port: Bangkok" in *DB 2015 Thailand* was the Bangkok city container port, not Laem Chabang, was a presumption based on lack of specific evidentiary details on the record of that segment.[176] Nevertheless, that ambiguity existed with respect to the location of the port of exit in the *DB 2015 Thailand* report was not in dispute and that this ambiguity created a substantive issue with respect to valuation of inland freight in the prior review belies Petitioners' present contention that the ambiguous "Port: Bangkok" port of exit identified in the *DB 2015 Thailand* report somehow represents a comparative advantage over the clearly defined "Laem Chabang" port identified in the *DB 2016 Thailand* information. Therefore, the Department agrees with Xugong and GTC that the specificity provided by *DB 2016 Thailand* indeed provides the better source to value inland truck freight.

Finally, even accepting Petitioners' arguments regarding rail transit with respect to *DB 2016 Thailand*, as discussed above, Petitioners still fail to demonstrate that *DB 2015 Thailand* does not otherwise exhibit the same "shortfalls" they claim are present in *DB 2016 Thailand*. Specifically, there is ambiguity regarding the mode of transport in both reports, as neither specifically identified the mode of transportation utilized.

[173] Petitioners argue this is purportedly corroborated by the lower traffic speeds for freight reported in the *DB 2016* reports for other South Asian countries with similar urban traffic congestion. *See* Petitioners' Case Brief, at 8.
[174] *See* World Bank *Doing Business*, Trading Across Borders Methodology, at 6.
[175] *See* Petitioners' Case Brief, at 6-7.
[176] *See OTR Tires 13-14*, at Comment 11.

When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[177] Moreover, contemporaneity with the POR is one of the criteria in our selection of SVs.[178] *DB 2016 Thailand* is contemporaneous with the POR, whereas *DB 2015 Thailand* pre-dates the POR by more than a year.[179] Even if we were to accept each of Petitioners' arguments, we find that the record lacks evidence that *DB 2015 Thailand* is in any way preferable to the contemporaneous and exit port-specific 2016 report, and we continue to use information from *DB 2016 Thailand* to value inland freight for these final results.[180]

Comment 5: Surrogate Value for Carbon Black

Background

The Department used price data for Thai imports under HS code 2803.00.40090 (Carbon, Nesoi (including Carbon Black); Other) to value carbon black inputs for the *Preliminary Results*.

Petitioners' Comments

- The Department did not address why Xugong's carbon black FOPs were best valued as "other" carbon blacks under Thai HS code 2803.00.40090.
- The basket category for carbon black (Thai HS 2803.00 ("Carbon, Nesoi (Including Carbon Black))) used in prior reviews of this order, as well as in investigations of other types of tires from the PRC, covers all types of carbon black that Xugong may have consumed, and thus results in a more accurate dumping margin.[181]
    - o Petitioners note that in the last review of this order, the Department explained that HS 2803.00 was the most appropriate HS category "to value all carbon black

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[177] *See* the Department's Antidumping Duty Procedures Manual, chapter 10, at 14 (citing *Carbazole Violet Pigment from the PRC*, at Comment 3).

[178] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 38673 (June 14, 2016), and accompanying IDM, at Comment 16, in which we selected one labor data source over another based on, in part, contemporaneity. *See also Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").

[179] *See* GTC's Initial SV Submission, at Exhibit 7B, and Petitioners' Initial SV Submission, at Attachment 10.

[180] *See* Final SV Memo.

[181] *See* Petitioners' Case Brief. at 8-9, (citing to *OTR Tires 13-14*, in a memorandum from the Department, "Final Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated April 12, 2016 ("OTR Tires 13-14 Final SV Memo"), at 2; *PVLT Tires from the PRC Final*, in the memorandum from the Department, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Surrogate Value Memorandum," dated June 11, 2015, at Attachment 1; *Truck and Bus Tires Prelim*, in the memorandum from the Department, "Truck and Bus Tires from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated August 26, 2016 , unchanged in *Truck and Bus Tires Final*; *OTR Tires 12-13 Final*, in the memorandum from the Department, "Final Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated April 8, 2015, at Attachment 1 (using the 280300 HTS category from Indonesia in the 2012-2013 review).

inputs with Thai data" because "it explicitly names the input in question in its description" and so was specific to all the types of carbon black consumed.[182]
  - They also state that in the investigation of this order, the Department explained that it was more appropriate to use a basket category to value carbon black than more specific data, because the basket category would "cover all imports…of all types of carbon black, {so} is more likely to encompass all types of carbon black used by {the respondent}…."[183]
- Xugong has not shown why the types of carbon black it uses are limited to those types that would be captured in the HS 2803.00.40090 for "other" carbon blacks.

Xugong's Rebuttal

- The Department relied on the Thai HS 2803.00 basket carbon black category in the preceding review because all parties agreed that it was the most specific information on the record of that review to value carbon black inputs.[184]
- The record of this review specifically describes the 11-digit figure as follows: "Other Carbon Blacks; other (other than anthracene or lamp black)," and Petitioners do not argue that any of the carbon blacks are anthracene or lamp black. They contend the record includes a specific description of each type of carbon black used by Xugong with no indication that any are anthracene or lamp blacks, which are covered under the basket category of HS 2803.00.[185]
- Moreover, the use of the six-digit category 2803.00 would necessarily include imports of acetylene black (HS 2803.00.20000), which the Department explicitly rejected as a proper base to value carbon black in the *OTR Tires 13-14 Final*.[186]
- Therefore, the Department should continue to use the Thai HS code 2803.00.40090, as this is an "other" subcategory of the 2803.00 classification which explicitly excludes several types of carbon blacks not used in the production of subject merchandise and is thus not distorted by imports of carbon black for which there is no evidence of use in the production of OTR tires and is necessarily more specific to the input in question.

Department's Position: For the final results, we continue to use the Thai HS code 2803.00.40090 to value the carbon black reported by Xugong. We agree with Xugong that the eleven-digit Thai HS code 2803.00.40090 provides the most specific record evidence for valuing the carbon black used in its production based on the evidence on the record. Because the remaining surrogate value criteria (*i.e.* whether contemporaneous with the POR, tax and duty exclusive, publicly available, or representative of a broad market average) do not favor one Thai HS code over the other, we find that Thai HS code 2803.00.40090 continues to provide the best available information on the record because of its superior specificity.

[182] Petitioners cite OTR Tires 13-14 Final SV Memo, at 12.
[183] Petitioners cite *OTR Tires LTFV Determination*, at Comment 14.
[184] *See* Xugong's Rebuttal Brief, at 1-4 (citing *OTR Tires 13-14 Final*, at 66).
[185] *See* Xugong's Rebuttal Brief, at 2 (citing the letter from Xugong, "New Pneumatic Off-the-Road Tires From the PRC: Submission of Surrogate Values of Xuzhou Xugong Tyres Co. Ltd," dated September 6, 2016 ("Xugong Initial SV Submission"), at Exhibit 2).
[186] Xugong cites *OTR Tires 13-14*, at 63.

In the final results of the prior review, the Department used the six-digit HS 2803.00 basket category for the final results, as it was the most appropriate choice from among the available record evidence provided by the respondents.[187] In the instant review, the question at issue is whether HS 2803.00.40090 appropriately further refines the basket 2803.00 category to exclude inappropriate types of carbon black and is therefore the most suitable category on the record to value input in question. We find that use of the six-digit category 2803.00 not only would include a number of carbon blacks not used in tire production, it would also necessarily include imports of acetylene black (HTS 2803.00.20000), which we explicitly rejected as a proper base to value carbon black in the prior review.[188]

To ensure the most accurate surrogate value for carbon black was used in this review, the Department requested information not provided in past reviews, namely that Xugong submit technical specifications, purchase orders or purchase contracts, supplier's invoices, packing lists, and quality certificates for the various carbon blacks used in their production.[189] The information provided by Xugong corroborated that lamp and acetylene black were not specific to the inputs used in their tire production.[190]

This information, as well as Xugong's detailed descriptions of the various carbon blacks used in its tire production, demonstrates that a number of the carbon blacks (such as acetylene, lamp, and anthracene) covered by the broader six-digit Thai HS 2803.00 are not used in the production of Xugong's tires.[191] Therefore, the Department continues to use Thai HS 2803.00.40090 as a surrogate value for Xugong's carbon black variables.

Comment 6: Surrogate Value for Tire Valves

Background

Xugong reported consumption of tire valve inputs in the production and sale of subject merchandise and described these products as "check valves of copper/copper alloy… {which} is a specific valve for tire products, and its main function is to inflate or release air /liquids. It is a one-way valve to keep air pressure of tire."[192] Prior to the *Preliminary Results*, parties submitted price data for Thai imports under four subcategories of the HS 8481 classification ("Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof") to value tire valves:

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[187] *See OTR Tires 13-14*, and accompanying IDM at Comment 12. The Department inadvertently used an incorrect value in the preliminary results, and therefore selected the basket category for the final results as it was the most appropriate information on record.
[188] *See OTR Tires 13-14*, and accompanying IDM at 63; Xugong Initial SV Submission, at Exhibit 1.
[189] *See* letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Second Supplemental Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated September 7, 2016, ("Xugong 2nd Supp Sec D").
[190] *Id*.
[191] *See* letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's republic of China," dated February 11, 2016 ("Xugong Sec D").
[192] *See* letter from Xugong entitled, Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Second Supplemental Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China, dated September 7, 2016 ("Xugong 2nd Supp Sec D"), at 2.

- 8481.30 ("Check (nonreturn) valves")[193]
- 8481.80 ("Other appliances")[194]
- 8481.80.1100 ("Valves for inner tubes, of copper or copper alloys")[195] and
- 8481.80.1200 ("Valves for inner tubes, of other materials")[196]

The Department used price data for Thai imports under HS category 8481.80 to value per kilogram valve costs for the deduction of the tube and flap from U.S. price for the *Preliminary Results*.[197]

<u>Petitioners' Comments</u>

- The basket Thai HS 8481.80 category used in the *Preliminary Results* includes a wide variety of valves for "other appliances" including water pipeline and ball valves with internal diameters of up to and above 40 cm (15.75 inches), and these valves differ significantly from tire valves.[198]
- Tire production does not use large plumbing valves or valves for other appliances that would also be captured in the basket category; however import information for a sub-set of this basket category exists on the record that is specific to the input in question (*i.e.*, valves for inner tubes of copper or copper alloy). As such, the Department should use the more-specific data for Thai imports under HS 8481.80.11 to value Xugong's copper tire valves.

<u>Xugong's Rebuttal</u>

- Petitioner's assertion that valves should be valued using Thai HS 8481.80.11 is incorrect because it pertains to "inner tube valves," whereas Xugong reported its input to be a check valve of copper/copper alloy.[199]
- A "check valve" is a specific valve for tire products, and its main function is to inflate or release air/liquids and is a one-way valve to keep air pressure within the tire. Therefore, the Department should rely on HS category 8481.30, which includes check valves of copper or copper alloys.[200]

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[193] *See* Xugong Initial SV Submission, at Exhibit 1.
[194] *Id.* In context of the harmonized tariff definition, this six-digit category is composed of taps, cocks, valves, *etc.* for "Other Appliances" and which are not elsewhere specified or indicated ("NESOI") by a sub-heading of the 8481 category.
[195] *See* Petitioners' Initial SV Submission, at Attachment 1. *See also* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Second Surrogate Value Submission," dated September 16, 2016 ("Petitioners' Second SV Submission"), at Attachment 4 for the definitions of products included in 8-digit categories under the Thai tariff system (as tariff classification is harmonized only to the 6-digit level).
[196] *Id.*
[197] *See* Preliminary SV Memo.
[198] *See* Petitioners' Case Brief, at 10-11, citing the definitions of merchandise contained in various eight-digit subcategories necessarily included in import price data reported at the broader six-digit 8481.80 level as provided in Petitioners' submission of the Thai tariff schedule in the Second SV Submission, at Attachment 4.
[199] *See* Xugong's Rebuttal Case Brief, at 12-13.
[200] *Id.*, citing the letter from Xugong, "Second Supplemented Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated September 20, 2016, at 2.

Department's Position: As an initial matter, the Department's use of price data for Thai imports under HS 8481.80 to value tire valve inputs for the *Preliminary Results* was in error. Our intent was to use import price data for the more specific HS 8481.80.11 category, which most closely matches the relevant input used by Xugong (*i.e.*, copper valves for tire tubes), but inadvertently used the broader six-digit category instead. As we inadvertently used the more general category in the *Preliminary Results*, we have corrected this error for the final results, and find the price data for Thai imports under HS 8481.80.11 the best available information on the record to value tire valve inputs, as discussed below.

The materials in question are the valve components reported in the factor of production buildup of tire inner tubes produced by and sourced from Xugong's affiliate Hanbang. Xugong reported that Hanbang used copper/copper alloy valves in its production of tubes during the POR. Thai HS 8481.80.11 covers, "Valves for inner tubes, of copper or copper alloys," which is specific to the input in question. The price information on the record for POR Thai imports of merchandise categorized under HS 8481.80.11, sourced from GTA, represents a range of publicly available, non-export, and tax-exclusive prices, contemporaneous with the POR and from the primary surrogate country, thus constituting a robust and highly product-specific dataset which fulfills each of the Department's criteria for surrogate value selection representative of the best available information on record.[201]

Xugong, however, claims that its valves are "check valves" most appropriately valued by the HS 8481.30 category for check valves. According to Xugong, this "check valve" category is most appropriate to value the input in question because "'Check Valve' is a specific valve for tire products, and its main function is to inflate or release air/liquids. It is a one-way valve to keep air pressure of tire."[202] However, we disagree with Xugong's characterization of a "check valve" as a tire-specific product most appropriate to value the tire valve in question. First, we note that the record lacks any support to substantiate Xugong's argument that the Thai HS code 8481.30 is more specific to Xugong's valve input beyond the company's statement to that effect and, despite a specific request for further information and explanation, Xugong failed to provide any documentation in support of its definition of a tire valve and check valve as one and the same.

Indeed, the description of the check valve as a "nonreturn" valve in a broad-basket category along with information placed on the record by Petitioners, confirms that a check valve is a general term for a broad category of non-return or one-way valves defined by general mechanical properties but not specific to any particular design, size, or end-use.[203] Thus, while the latter part

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[201] *See* Petitioners' 2nd Rebuttal Submission, at Attachment 4.
[202] *See* letter from Xugong entitled, Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Second Supplemental Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China, dated September 7, 2016 ("Xugong 2nd Supp Sec D"), at 2.
[203] *See* Petitioners' 2nd Rebuttal Submission, at Attachment 5 ("Check valves are mechanical valves that permit gases and liquids to flow in only one direction, preventing process flow from reversing. They are classified as oneway directional valves. Fluid flow in the desired direction opens the valve, while backflow forces the valve closed. The mechanics of check valve operation are not complicated." This attachment then provides examples of many different check valves of various shapes, sizes, and end uses; none of which are described as valves for tire inner tubes (though various other applications are indeed indicated), and many of which fail to exhibit similarities to a valve which could be used for a tire inner tube.).

of Xugong's statement may be accurate (*i.e.*, a check valve's "main function is to inflate or release air/liquids and is a one-way valve"), the record contradicts Xugong's primary proposition that a check valve "is a specific valve for tire products… a one-way valve to keep air pressure of tire."

Even presuming that the mechanical properties of a tire tube product would allow it to be defined as a type of "check valve" generally, under the broad definition of the latter term, HS 8481.30 would still not be the best available information on the record because the record contains a more product-specific dataset, *i.e.*, price data for Thai imports under HS 8481.80.11 specific to copper/alloy valves for inner tubes.[204] Unlike 8481.80.11, the 8481.30 "check valve" category lacks any mention of tire or tube valves and there is no record evidence otherwise to support Xugong's claims that this category is the most specific to the input in question, nor does Xugong sufficiently refute Petitioners' claims as to 8481.80.11's specificity advantage. Instead, Xugong submits the confounding claim that HS 8481.30 covers check valves made of "copper/copper alloy". While this six-digit category may indeed include certain valves made of copper/copper alloy, it is neither specific to valves made of copper/copper alloy nor to tube valves, while HS 8481.80.11 is.

Furthermore, Xugong's contention that the 8481.80.11 category is somehow non-specific because it covers valves for inner tubes, whereas its products are agricultural tires, is similarly dubious. That the term "valve for inner tube" refers to valves for *tire* inner tube is clear and supported by the record. The Thai HS schedule provided by Petitioners on the record states that the product covered is "valve for inner tube."[205] Xugong itself refers to the product as "inner tubes" in its section A response.[206] Inner tubes are a tire specific product. Furthermore, the Thai tariff schedule under the same subgrouping of HS numbers (8481.80) makes the fact that these are all "tire"-related valves more clear.[207] Specifically, the English translation provided in the Thai HS schedule for 8481.80.13 and 8481.80.14 states that they are "valves for tubeless tyres (of copper/alloy and of other materials)", respectively, which mirrors the exact set-up of 8481.80.11 and 8481.80.12.[208] This corroborates that the 8481.80.11 category is specific to valves for *tire* inner tubes, which is the precise input being valued. The value of these valves is being deducted from the U.S. price, as tubes are not subject to the *Order*. Therefore, this Thai

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[204] Xugong notes that a tire valve is a one-way valve keeping air pressure in a tire/tube and preventing return flow, which are the properties of a check valve, whereas Petitioners point out that the mechanism that allows for deflation means that a tire valve is not exclusively a one-way valve and thus a cannot truly be a check valve. The present record is simply ambiguous and does not contain sufficient information on valve classification in the broad sense to resolve this question. Regardless, the necessity of a finding on this question is both precluded by the existence of product-specific dataset on the record, but also unnecessary since this is not a specific argument raised for consideration by Xugong (*i.e.*, whether tire valves could be reasonably considered a type of check valve, rather Xugong's rebuttal forwards the above-refuted premise that a check valve and tire valve are one in the same). Thus, the Department has not taken a position as to whether this would be an appropriate classification for a tire valve, generally.
[205] *Id*.
[206] *See* letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section A Questionnaire Response for the Administrative Review of New Pneumatic Off-The Road Tires from the People's Republic of China," dated January 1, 2016 ("Xugong Sec. A"), at Exhibit A-10(3).
[207] *Id*.
[208] *Id*.

HS category represents the best available information to provide a surrogate value because itis specific to the tubes, not the type of tire produced. The inputs in question are valves for tire inner tubes (specifically for an OTR tire, which includes agricultural tires) and thus the SV in question is precise to the input and Xugong's contention is incorrect.

For the foregoing reasons, we find that import information for Thai imports of merchandise categorized under HS 8481.80.11 represents the best available information on record to value tire valve inputs. Accordingly, we have corrected our inadvertent error from the *Preliminary Results* and used this information to value Xugong's relevant FOPs for the final determination.[209]

Comment 7: Warehousing Expense Calculation for Xugong

Petitioners' Comments

- Xugong did not report the unit cost of warehousing expenses incurred in the United States for CEP sales, arguing that it was not required to because its U.S. distribution warehouse was at "the same address as the distribution facility that made the sales."[210]
- Under 19 CFR 351.401(e)(2), because Xugong's U.S. warehouse was not the original factory where Xugong's merchandise was produced, Xugong's U.S. warehousing expenses should be deducted from Xugong's CEP sales.[211]
- As Xugong declined to provide these warehousing costs, the Department should then only apply the warehousing cost deduction to retail out-of-warehouse CEP sales, as facts available. Petitioners provide two options for this facts available calculation, one based on Xugong's submissions, which they assert were incomplete for the task, and one based on GTC's experience. Both were calculated on a per-tire basis.[212]

Xugong's Rebuttal

- The Department's questionnaire instructions were entirely clear, that "the cost of warehousing reported in this field should include only expenses incurred at a warehouse not located at the distribution facility that sold the merchandise."[213] Xugong contends that the Department never asked for CEP warehousing expenses in either the initial or any supplemental questionnaire.
- Xugong included all relevant expenses in its calculation of indirect selling expenses ("ISEs"). As Petitioners note, Xugong reported costs for warehouse rent, and warehouse supplies, and Petitioners speculate that these amounts do not appear to include other warehousing related

[209] *See* Final SV Memo.
[210] Petitioners cite "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section C Questionnaire Response for the Administrative Review of New Pneumatic Off-The- Road Tires from People's Republic of China," dated February 5, 2016 ("Xugong Sec C"), at 40.
[211] *See* Petitioners' Case Brief, at 12, citing *Certain Frozen Warmwater Shrimp From Thailand*, 73 FR 50933 (August 29, 2008) and accompanying IDM, ("*Frozen Warmwater Shrimp from Thailand 06-07*"), at Comment 2.
[212] *Id.*, at 12-13, citing Xugong Sec C, at 3; letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Supplemental Section C Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated August 29, 2016 ("Xugong Supp Sec C"), at 2.
[213] *Id.*, at 4, citing letter from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire," dated December 16, 2015 ("Initial Questionnaire"), at C-15.

costs, such as labor. However, Petitioners ignore the fact that payroll expenses and utilities are also included in the total amount of indirect selling expenses taken directly from the profit and loss statement of Armour Tires Inc. ("ATI") (Xugong's U.S. affiliate) for the period of review. Xugong argues there is no evidence that any expenses related to the warehousing of Xugong's tires at ATI have not been accounted for in ATI's ISE calculation.[214]

- Even if the Department were to make any adjustment to Xugong's data, Petitioner's proposal to rely on GTC's experience is entirely inappropriate: GTC's business practices are irrelevant to Xugong's business practices. Xugong maintains that no "facts available" determination is appropriate, because all relevant information is on the record and accounted for.
- Finally, Petitioners' suggested calculations lead to a determination of a value on a per-tire basis, while Xugong's reporting basis, and the Department's calculation basis, are both on a per-kilogram basis. Xugong notes that if the Department were to make any calculation for a specific "U.S. Warehousing" expense, then the Department must be sure to exclude warehousing costs from Xugong's indirect selling expense calculation, in order to ensure that such expenses are not double-counted.

Department's Position: In the final results, we have determined that Xugong's U.S. warehouse expenses should be separated from its indirect selling expenses and deducted from Xugong's retail (out of warehouse) CEP sales on a per-tire basis, based on the facts available in Xugong's submissions. We agree with Petitioners that under Department practice, as defined in 19 CFR 351.401(e)(2) and clarified by *Frozen Warmwater Shrimp from Thailand 06-07*, Xugong's U.S. warehousing costs are incurred after the subject merchandise or foreign like product leaves the original place of shipment, and therefore should be deducted as movement expenses.[215] The place of production and original shipment point for the merchandise in Xugong's CEP sales was in China; therefore all warehousing expenses after this point should be deducted from the U.S. price for Xugong's out of warehouse ("wholesale" or "retail") CEP sales (reported as "Channel 3" sales).[216] Under section 776(a)(1) of the Act, the Department can use facts otherwise available on the record if the necessary information to make the proper determination is not available on the record. Xugong did not report specific U.S. warehouse expenses for CEP sales to the Department, but, as described below, did provide the necessary information throughout its responses to determine this expense. To accomplish this, we calculated a per-tire expense based on facts available in Xugong's submissions.

The record shows that Xugong included its U.S. warehousing expenses in its unit cost of its ISE ratio, which is based on total sales.[217] Because (1) Xugong's ISE ratio calculation is based on total sales, (2) under section 772(c)(2)(A) of the Act, U.S. warehouses expenses are deducted from CEP sales as "additional… expenses… incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery {Xugong's U.S. Warehouse} in the United States," and (3) its warehousing expenses are only incurred on "wholesale" or "retail" sales made out of the warehouse, we find the Xugong's warehouse

[214] *Id.*, at 4-5, citing Xugong Sec C, at Exhibit C-14.
[215] *See* Petitioners' Case Brief at 12, citing *Frozen Warmwater Shrimp from Thailand 06-07* and accompanying IDM, at Comment 2.
[216] *See* Xugong Supp Sec C, at 2.
[217] *See* Xugong Sec C, at Exhibit C-14(2).

expenses as reported as a part of the ISE ratio are understated. To remedy this understatement, using record information, we calculated a unit cost per-tire for warehousing expenses and applied it to those sales Xugong reported as incurring a warehouse expense. As Xugong did not provide the specific warehousing expense necessary for the calculation on the record, under section 776(a)(1) of the Act, using facts available, we identified the warehousing expenses included in Xugong's ISE ratio calculation[218] and divided these costs by the maximum number of tires that incurred U.S. warehousing expenses.[219] We then applied this warehouse cost as a sales adjustment to Xugong's Channel 3 sales.[220]

In addition, because it is our practice[221] to exclude from a company's ISE sales adjustment any expense accounted for elsewhere in the margin program, we removed the warehousing costs used in the above calculation from the numerator in the ISE ratio calculation and applied the revised ISE ratio to Xugong's net sales price (*i.e.,* gross unit price less sales adjustments). We then replaced Xugong's reported ISE sales adjustment with the revised ISE unit cost in the margin program for Xugong.

Comment 8: Whether to Adjust Xugong's U.S. Prices for Irrecoverable Value Added Tax

<u>Xugong's Comments</u>

- The Department should not reduce Xugong's reported U.S. prices for un-refunded VAT because the only VAT liability Xugong incurred for its U.S. sales was for the VAT paid for purchases of material inputs, which is paid regardless of whether the transaction is a domestic or export sale. If the Department continues to make a deduction for VAT, it should rely on Xugong's reported VAT because it represents Xugong's actual nonrefundable input VAT.
- The Department misunderstands the exact calculation methodology for determining irrecoverable VAT. It mistakes the basis of an interim calculation for the final calculation. The PRC VAT regulations base VAT refund on the ratio of the export VAT {refund} rate (nine percent) divided by the VAT rate paid on inputs (17 percent).
- The Department's VAT calculation (*i.e.*, input VAT of 17 percent minus the refund rate of nine percent) does not consider the nature of a value-added tax system because, in addition to the material inputs, the value-added portion of the tax also includes labor, energy, and technical expertise; thus, the resulting eight percent un-refunded portion, as calculated by the Department, overstates the actual liability incurred by Xugong on exports and is a mathematical impossibility.
- If the Department continues to calculate a VAT adjustment, for Xugong's CEP sales, the Department should use Xugong's free-on-board ("FOB") export price as the base price, not its gross unit price ("GUP"), consistent with practice.[222] Xugong provided an alternative

[218] *Id*.
[219] For a complete description of the calculation and the factors used in the calculation, *see* Xugong's Final Analysis Memo.
[220] *Id*.
[221] *See* 19 CFR 351.401(b)(2).
[222] *See* Xugong's Case Brief, at 9 (citing *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 62088 (September 8, 2016) and accompanying IDM, ("*Activated Carbon 14-15*"), at 9).

calculation for its VAT adjustment, which calculates an FOB export price by dividing its reported VAT by Xugong's effective VAT rate.

- The Department does not have the legal authority, nor does it have a legal basis, to make deductions to U.S. price for nonrefundable VAT[223] because it is not an export tax or charge imposed by the exporting country on the subject merchandise shipped to the United States.[224]
- PRC regulations state that, "for taxpayers that export goods the tax rate shall be zero;" thus, Xugong's exports are exempt from the payment of VAT.[225]

Qingdao FTZ's Comments

- The Department should recalculate Xugong's reported U.S. prices without any VAT deduction to U.S. price.
- There is no support for any assumption that VAT is included in Xugong's export price because the record plainly shows that the VAT rate for PRC export sales is zero.[226] Thus, the Department had no lawful basis to make its adjustment.
- The Department's methodology for computing a VAT deduction based upon the VAT rate, rather than the VAT amount, must be reconsidered.[227]
- The Department does not have the legal authority to make deductions to U.S. price because it is not an export tax or charge imposed by the exporting country on the subject merchandise to the United States.[228]

Petitioners' Rebuttal

- The Department has rejected the claim that it lacks the authority to adjust for irrecoverable VAT imposed by a NME government.[229]
- Additionally, the Department has established that its practice is to reject firm-wide allocations of VAT across all company sales, such as the firm-wide VAT calculation that Xugong provided in its questionnaire response.

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[223] *Id.*, at 1-3 (citing *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) ("*Methodological Change*"), *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 842 (1984), *Wind Tower Trade Coalition v. United States*, 741 F.3d 89, 97 (CAFC 2014) (quoting *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 842 (1984)), and *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1371 (CAFC 2010)).

[224] *Id.*, at 1 (citing section 772(c)(2)(B) of the Act).

[225] *Id.*, at 3 (citing Interim Regulations of the People's Republic of China on Value-Added Tax (Rev. 2008)).

[226] *See* Qingdao FTZ's Case Brief, at 4 (citing to Interim Regulations of the People's Republic of China on Value-Added Tax (2008), at Article 2(1)(c) "the tax rate for taxpayers exporting goods shall by 0%").

[227] *Id.*, at 10 (citing to *Fine Furniture (Shanghai), Ltd. V. United States*, 2016 CIT Slip-Op 16-85, 11-15 (CIT Sept. 9, 2016), *Federal Mogul v. United States*, 63 F.3d 1572 (Fed. Cir 1995) (supporting Commerce's use of the VAT amount paid rather than the VAT rate to preserve tax neutrality); *see E. I. DuPont De Nemours & Co. v. United States*, 20 C.I.T. 373, 381 (1996) (remanding the case so Commerce can apply a VAT adjustment based upon the amount of VAT paid rather than the applicable VAT rate)).

[228] *Id.*, at 9 (citing section 772(c)(2)(B) of the Act).

[229] *See* Petitioners' Rebuttal Brief, at 28 (citing *OTR Tires 13-14* and accompanying IDM, at Comment 3). (Whether to Adjust Xugong's U.S. Prices for Irrecoverable VAT).

- Xugong has failed to provide reliable FOB values for its CEP sales. Thus, the Department should follow its precedent in *Carbon 14-15*[230] and apply the eight percent irrecoverable VAT rate to a calculated customs FOB value (*i.e.*, ex-factory net U.S. price plus foreign movement expense) for Xugong's CEP sales.

Department's Position: For the reasons explained below, we continue to reduce Xugong's U.S. sales prices by eight percent, which is the percentage of irrecoverable VAT.[231] In addition, for Xugong's CEP sales, we have used its entered value as the FOB value of Xugong's exported goods. For its export price ("EP") sales, we have continued to use its reported GUP.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any unrefunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[232] In this announcement, the Department stated that, when a NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise from which the respondent was not exempted, the Department will reduce the respondent's EP or CEP, accordingly, by the amount of the tax, duty or charge paid, but not rebated.[233]

In a typical VAT system, companies do not incur any VAT expense for exports. Rather, upon export, they receive a full rebate of the VAT paid on inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they paid on input purchases for those sales against the VAT they collect from customers.[234] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on inputs used in the production of exports is not refunded.[235] This unrefunded amount differs from the amount refunded on domestic sales, and thus amount to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[236]

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Xugong argues that it pays no VAT tax upon export, it misstates what is at issue. The issue is the *irrecoverable*

[230] *Id.*, at 33-35 (Citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) and accompanying IDM, at Comment 1 ("*Activated Carbons Review 14-15*").
[231] *See* Xugong Sec C, at 57-59.
[232] *See Methodological Change*, 77 FR 36481.
[233] *Id.*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying IDM, at Comment 5.
[234] *See, e.g., Diamond Sawblades 11-12,* and accompanying IDM, at Comment 6; *Methodological Change*, 77 FR at 36483.
[235] *See* Xugong's February 4, 2016, Initial Section C Response, at 54-57 and Exhibit C-20; *see also Methodological Change*, 77 FR at 36483.
[236] *See Methodological Change*, 77 FR at 36483.

VAT.[237] Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports.[238] It is VAT paid on inputs and raw materials used in the production of exports that is non-refundable and, therefore, a cost.[239] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exports of the subject merchandise to the United States. The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as the result of export sales. It is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on the exportation of subject merchandise. Furthermore, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, *i.e.*, that dumping margin calculations be tax neutral.[240]

Our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is seventeen percent and the VAT rebate rate for the subject merchandise is nine percent.[241] Therefore, for the final results, we removed an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value from the calculated U.S. price, consistent with the definition of irrecoverable VAT under the PRC's tax laws and regulations.[242]

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[243] The first variable, export value, is unique to each respondent and sale, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[244]

The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Contrary to the PRC's VAT schedules, Xugong argues that we should rely on its reported VAT adjustment based on its

[237] Xugong's incurrence of irrecoverable VAT is evident from the record. *See, e.g.*, Xugong Sec C, at 56-57 and Exhibit C-20(1).
[238] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) ("*SDGE from the PRC 12-13*") and accompanying IDM at Comment 7.
[239] *Id*.
[240] *See Methodological Change*, 77 FR at 36483; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997).
[241] *See* Xugong Sec C, at 57-59.
[242] *See, e.g., Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM at Comment 1.
[243] *Id.*, at Comment 1, n. 35.
[244] *Id.*, at Comment 1, n. 36.

own unrefunded VAT calculation. Xugong's unrefunded VAT calculation is based on all company sales and/or across sales of different products with different VAT schedules.[245] In the *Preliminary Results*, we did not rely on Xugong's reported VAT adjustment because it is not product-specific, but rather reflects all company sales and/or sales across different products with different VAT schedules.[246] Instead, we followed our standard practice and calculated the VAT adjustment using the difference between the VAT rate paid on inputs (17 percent) and the export VAT refund rate (nine percent), consistent with PRC regulations.[247] This determination was bolstered by the fact that Xugong could not demonstrate that this methodology does not apply to its sales of subject merchandise.[248]

For the final results, we have continued to reduce Xugong's U.S. sales prices by eight percent, which is the percentage of irrecoverable VAT. The Department's regulations at 19 CFR 351.401(c) require that we rely on price adjustments (*e.g.* unrefunded VAT taxes) that are "reasonably attributable to the subject merchandise." Thus, our analysis is consistent with the regulations, our current VAT policy, and our treatment of irrecoverable VAT in recently-completed NME cases.[249]

Our initial questionnaire to Xugong instructed Xugong: (1) to explain in detail if the irrecoverable VAT amount reported is not directly derived as the difference between the VAT tax rate applicable to domestic purchases and inputs and the refund rate for export sales of subject merchandise; (2) to provide worksheets demonstrating how to calculate the irrecoverable VAT; (3) to reconcile the worksheets to the translated VAT tax returns provided and provide a detailed narrative explanation that describes the calculations shown in the worksheets; and (4) for each reconciling item reported in the worksheets, to provide documentation and a citation to the PRC laws and regulations to fully support the reason for the reconciling item.[250] However, Xugong did not provide this information, and the limited information it did provide would result in an adjustment to irrecoverable VAT based on non-product-specific data. Further, Xugong did not claim or offer any evidence that it was rebated input VAT at more than the standard nine percent on their export sales.[251] With respect to Xugong's assertion that it provided the exact type of reconciliation to its VAT tax returns that the Department requested in its VAT questionnaire, we note that our request was for parties to reconcile the amount of irrecoverable VAT reported to its VAT tax returns. Xugong only reconciled the input and output VAT to its tax returns and, as such, did not provide the reconciliation requested.[252]

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[245] *See* Xugong Sec C, at Exhibits C-20(1) and C-20(2).
[246] *See* PDM, at 24.
[247] *See, e.g.*, *Diamond Sawblades 11-12* and accompanying IDM, at Comment 6; *see also*, *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 69942 (November 12, 2015) and accompanying IDM, at Comment 3.
[248] *See* Xugong Sec C, at 57-59.
[249] *Id.*; see also *Diamond Sawblades 11-12* IDM at Comment 5A.
[250] *See* the Department's letter to Xugong, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire," dated December 15, 2015, at C-33.
[251] *See* Xugong Sec C, at Exhibit C-20(1).
[252] *See* Xugong Sec C, at Exhibit C-20.

Xugong's proposal to calculate a "net" or "effective" company-wide VAT position[253] significantly reduces the impact of this product-specific tax by spreading it across products with potentially different VAT schedules and across domestic sales. The Department's deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a more reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. Xugong's methodology, in contrast, effectively ignores this direct link and dilutes the product-specific tax effect as previously explained. Additionally, Xugong's proposed methodology is distorted by timing differences that occur between the VAT-in value, the VAT-out value, and the receipt of the VAT refund, as well as the varying rebate rates on subject and non-subject merchandise.[254] Therefore, employing such a methodology would introduce distortion into the dumping margin calculation and obfuscate the true "apples-to-apples" comparison of U.S. price with normal value on a product-specific, tax-exclusive basis.

We disagree with Xugong's and Qingdao FTZ's claim that we do not have the statutory authority to adjust for irrecoverable VAT, and that our methodology unlawfully interprets section 772(c)(2)(B) of the Act. As stated above, section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Moreover, in *Fushun Jinly*,[255] the Court disagreed that the primary purpose of the Act's NME methodology provisions is necessarily to disregard prices and costs incurred in the production and sale of the subject merchandise that were incurred in the NME country.[256] In addition, the Court observed that, although NMEs are specifically addressed in the Act's normal value provisions,[257] NMEs are not named in the Act's U.S. price provisions.[258] Furthermore, "with regard to U.S. price, neither the governing statute nor its legislative history defines 'export tax, duty or other charge imposed' for the purpose of adjusting U.S. price."[259] The Court continued:

> Commerce reconsidered its interpretation and concluded that "export tax, duty or other charge imposed" includes VAT that is not fully refunded upon exportation…Such a methodological update, achieved through notice and comment, compels *Chevron* deference. On this issue, the plaintiffs do not persuade that deduction of the portion of the PRC's VAT that was unrefunded or irrecoverable upon export of their subject merchandise to the United States was contrary to law and not supported by substantial evidence.[260]

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[253] *See, e.g.,* Xugong Sec C, at 54-57 and Exhibit C-20.
[254] *Id.* Specifically, Xugong reports its VAT refunds across all merchandise sold, and does not specify what applies to subject merchandise by input or final product.
[255] *See Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Slip Op. 16-25, Ct. No. 14-00287 (CIT 2016) ("*Fushun Jinly*").
[256] *Id.*, at 24.
[257] *Id.*, at 25 (citing section 773(c)(1)(B) of the Act).
[258] *Id.* (citations omitted).
[259] *Id.*
[260] *Id.*

Therefore, as explained above, to the extent that the amount of VAT paid on inputs used to produce OTR tires is not refunded upon exportation of the finished product, section 772(c)(2)(B) supports our adjustment for irrecoverable VAT. Additionally, the term "imposed," as used in the Act, does not require a positive action, nor does the PRC's status as an NME preclude the Department from making irrecoverable VAT adjustments.

We disagree with Xugong's argument that the Department misunderstands the exact calculation methodology for determining irrecoverable VAT by mistaking the basis of an interim calculation for the final calculation. Without citing to any relevant PRC tax law, Xugong argues that the PRC VAT regulations base VAT refund on the ratio of the export VAT {refund} rate (nine percent) divided by the VAT rate paid on inputs (17 percent). Moreover, the record does not support Xugong's argument that a different formula or basis should be used for determining unrefunded (irrecoverable) VAT. As such, Xugong's assertion that the Department's calculations are mathematically incorrect are based on the unsupported claim that there is an interim and final calculation for determining the PRC's VAT refund amount. Therefore, the Department finds that Xugong's second alternative calculation is without merit and will not be considered for the final results. Rather, we find that the mathematical formula used (eight percent * FOB export price) is arithmetically accurate and is consistent with the PRC tax law.

Finally, we agree with Xugong that its GUP for its CEP sales does not represent an FOB export price and find that its entered value better represents this price. In the *Preliminary Results*, we used Xugong's GUP as the FOB export price for calculating its VAT adjustment. Xugong requests that the Department use the FOB price rather than GUP for its CEP sales, stating that its FOB export price was the basis for its reported VAT adjustment amount. To do so, Xugong suggests FOB export price be calculated by dividing its reported VAT amount for each transaction by its reported net VAT rate. However, the record does not show Xugong used either the reported FOB price or this proposed calculation for reporting its VAT adjustment in its U.S. sales database. Thus, it is not necessary to consider Xugong's alternate FOB price calculation in our analysis for Xugong's VAT adjustment; instead we will rely on the reported entered value. In addition, when reliable FOB prices have not been reported by respondents, it is the Department's practice to use entered values as the base when calculating irrecoverable VAT for CEP sales.[261] For this reason, we find that Xugong's reported entered value is the best base price for calculating Xugong's VAT adjustment. Accordingly, we have used Xugong's entered value to calculate the VAT adjustment for its CEP sales and we have continued to use GUP for its EP sales.

Comment 9: Additional Comments Raised by GTC

GTC requests that, if the Department determines GTC eligible for a separate rate and calculates a margin based on its own information submitted on the record of this review, we use the following surrogate values to value GTC's reported factors of production:

[261] *See Activated Carbon 14-15* and accompanying IDM, at 9.

- The price of Standard Thai Rubber ("STR") 20 grade natural rubber to value GTC's compound rubber.[262]
- Financial statements submitted from Goodyear Tires, SR Tyres, Thai Sin Rubber, Otani Tires, and Vee Rubber to calculate GTC's surrogate financial ratios.[263]
- The Chumhol price quote submitted by GTC, rather than the Thai Airlines cargo warehousing rates, to value GTC's warehousing charges.[264]
- Apply the Thai National Statistics Office ("NSO") 2012 Business and Industrial Census industry-specific code 20299 labor cost data, instead of the Thai NSO October 2014-September 2015 general manufacturing data, to value labor.[265]

Department's Position: As we continue to find GTC ineligible for a separate rate, we note that certain issues raised by GTC are moot, and we therefore decline to address comments with respect to the valuation of GTC's individual factors of production.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

4/12/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[262] *See* GTC's Case Brief, at 35.
[263] *Id.*, at 40.
[264] *Id.*, at 45.
[265] *Id.*